

NOTICE

**THIS CONTRACT CANNOT BE UTILIZED AS A
COOPERATIVE CONTRACT**



CONTRACT NO. 137737

Freight Operations

CONTRACTOR: Watco Companies, L.L.C.
315 West 3rd Street
Pittsburg, KS 66762

AWARD DATE: July 1, 2015

CONTRACT TERM: October 1, 2015 through September 30, 2035

PRICE: Revenue Sharing 16.5%

DBE GOAL N/A

PROJECT MANAGER:
Scott Phebus
Telephone #512-369-7795
Email Address: Scott.Phebus@capmetro.org

CONTRACT ADMINISTRATOR:
Kirk D. Perry, CPSM
Telephone #512-389-7528
Email Address: kirk.perry@capmetro.org

PROCUREMENT DEPARTMENT
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
2910 E. 5th STREET
AUSTIN, TEXAS 78702

TABLE OF CONTENTS
FREIGHT OPERATIONS

Contract No. 137737 (RFP 131936)

TAB	DESCRIPTION
1	AWARD CONTRACT FORM
2	EXHIBIT A-REVISED-1 – Schedule (FPR), dated June 1, 2015
3	CLARIFICATIONS TO FPR dated, June 5, 2015
4	EXHIBIT B – Representations and Certifications
5	EXHIBIT E-REVISED-2 – Contractual Terms and Conditions
6	EXHIBIT F-REVISED-1 – Scope of Services
7	APPENDICES: H. Configuration Management Plan I. Software Management Plan J. Rail Systems Crossing Design Criteria Manual K. Private Grade Crossing Criteria L. Bridge Safety Management Plan
8	AMENDMENTS 1-5
9	CONTRACTOR'S FINAL PROPOSAL REVISION, dated June 1, 2015, incorporated by reference
10	CONTRACTOR'S INITIAL PROPOSAL, Volumes 1 and 2 dated April 21, 2015, incorporated by reference

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY
AUSTIN, TEXAS

¹AWARD/CONTRACT

1. SOLICITATION NO: 131936	2. CONTRACT NO.: 137737	3. EFFECTIVE DATE: ² July 1, 2015
--------------------------------------	-----------------------------------	--

4. BUYER	
NAME: Kirk Perry	PHONE: (512) 389-7528
5. SHIP TO ADDRESS: Capital Metro 2910 East 5 th Street Austin, Texas 78702	6. DELIVERY TERMS: FOB Destination
8. CONTRACTOR NAME & ADDRESS: Watco Companies, L.L.C. 315 West 3 rd Street Pittsburg, KS 66762	7. DISCOUNTS FOR PROMPT PAYMENT: N/A
PHONE: (620) 240-3646	9. REMITTANCE ADDRESS: (if different from Item 8)
FAX:	

³10. DBE GOAL: N/A


CONTRACT EXECUTION

CAUTION: A false statement in any bid or proposal submitted to CMTA may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

NEGOTIATED AGREEMENT: (Contractor is required to sign below and return an original document to the Contracting Officer within five (5) calendar days of receipt.)

Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified below and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this Award/Contract, (b) the solicitation, as amended, and (c), such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein.

⁴SIGNATURE OF CONTRACTOR:

Name/Title: Bryan Williams Signature:  Date: 7/1/15
VP Sales/Marketing - South

AWARD: Items listed below are changes from the original offer and solicitation as submitted.

This Award/Contract Form may be executed in multiple originals, and an executed facsimile shall have the same force and effect as an original document.

⁵ALTERATIONS IN CONTRACT:

Reference is made to Clarifications dated June 5, 2015 submitted by Watco Companies regarding changes to the required self-insurance retention and change in pricing.

Exhibit E Revised-2, Paragraph (7) (a)(4) is deleted in its entirety and replaced with the following: "Railroad liability insurance with limits not less than One Hundred Million and No/100 Dollars (\$100,000,000) including Three Million Dollars (\$3,000,000) of self- insurance retention (SIR). The Authority shall be endorsed as a NAMED INSURED by the Contractor with respect to the contract.

Exhibit A Revised-1 (FPR) Schedule dated June 1, 2015, Sections 6a and 7-12, Contractor's Proposed Minimum, is amended to increase the Contractor Proposed Minimum from 15% to 16.5%.

⁶ACCEPTED AS TO: Tab C, Option 1, Exhibit A Revised-1 (FPR) Schedule dated June 1, 2015, Sections 6a-6f at 15% and additional 1.5% all items inclusive. Section 6a amended to 16.5% as per Alterations in Contract.

⁷SIGNATURE OF CONTRACTING OFFICER:

Typed Name: Earl Atkinson Signature:  Date: 07/02/15

**EXHIBIT A Revised-1 (FPR)
SCHEDULE
RFP 131936**

THE OFFEROR IS REQUIRED TO SIGN AND DATE EACH PAGE OF THIS SCHEDULE

1. IDENTIFICATION OF OFFEROR AND SIGNATURE OF AUTHORIZED AGENT

Company Name (Printed)	Warco Companies, LLC		
Address	315 West 30th Street		
City, State, Zip	Pittsburg, KS 66762		
Phone, Fax, Email	620-240-3646		rwilliams@warco.com
The undersigned agrees, if this offer is accepted within the period specified, to furnish any or all supplies and/or services specified in the Schedule at the prices offered therein.			
Authorized Agent Name and Title (Printed)	Ryan Williams OP Sales + Marketing South Region		
Signature and Date	<i>Ryan Williams</i>		6-1-2015

2. ACKNOWLEDGEMENT OF AMENDMENTS

The offeror acknowledges receipt of the following amendment(s) to this solicitation (give number and date of each).

Amendment #	Date	Amendment #	Date
1	3/3/2015	4	5/27/2015
2	3/21/2015	5	5/28/2015
3 FPR	5/22/2015		

3. PROMPT PAYMENT DISCOUNT

# Days	N/A	Percentage	N/A	%
--------	-----	------------	-----	---

Note, payment terms are specified in Exhibit E, Contractual Terms and Conditions.

4. AUTHORITY'S ACCEPTANCE (TO BE COMPLETED UPON AWARD BY CAPITAL METRO)

The Authority hereby accepts this offer.

Authorized Agent Name and Title (Printed)	
Signature and Date	
Accepted as to:	

5. REQUIRED OFFER SUBMITTALS

The offeror has enclosed an original offer plus six (6) copies. Each offer must contain the following **required** submittals. Mark each box below to indicate the submittals have been included in the proposal documents.

The remainder of Exhibit A – Pricing Schedule has been redacted.

For further information regarding Exhibit A, you may:

- Reach out to the Contractor directly via the Contractor contact details provided on the cover page of this contract.

OR

- Submit a public information request directly to PIR@capmetro.org.

For more information regarding the Public Information Act and submitting public information requests, follow this link to our website: <https://www.capmetro.org/legal/>

EXHIBIT B
REPRESENTATIONS AND CERTIFICATIONS
(LOCALLY FUNDED SUPPLY/SERVICE/CONSTRUCTION CONTRACTS)
MUST BE RETURNED WITH THE OFFER

1. TYPE OF BUSINESS

(a) The offeror operates as (mark one):

- An individual
- A partnership
- A sole proprietor
- A corporation
- Another entity _____

(b) If incorporated, under the laws of the State of:

Delaware

2. PARENT COMPANY AND IDENTIFYING DATA

(a) The offeror (mark one):

- is
- is not

owned or controlled by a parent company. A parent company is one that owns or controls the activities and basic business policies of the offeror. To own the offering company means that the parent company must own more than 50% of the voting rights in that company.

(b) A company may control an offeror as a parent even though not meeting the requirements for such ownership if the company is able to formulate, determine, or veto basic policy decisions of the offeror through the use of dominate minority voting rights, use of proxy voting, or otherwise.

(c) If not owned or controlled by a parent company, the offeror shall insert its own EIN (Employer's Identification Number) below:

(d) If the offeror is owned or controlled by a parent company, it shall enter the name, main office and EIN number of the parent company, below:

Watco Holdings, Inc.
[REDACTED]

3. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(a) The offeror certifies (and all joint venture members, if the offer is submitted by a joint venture) that in connection with this solicitation:

(1) The prices offered have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, with any other offeror or with any other competitor;

(2) Unless otherwise required by law, the prices offered have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening of bids in the case of an invitation for bids, or prior to contract award in the case of a request for proposals, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

4. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(a) In accordance with the provisions of 2 CFR (Code of Federal Regulations), Part 180, the offeror certifies to the best of the offeror's knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three (3) year period preceding this offer been convicted of or had a civil judgement rendered against them for the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (a)(2) above; and

(4) Have not within a three (3) year period preceding this offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

(b) Where the offeror is unable to certify to any of the statements above, the offeror shall attach a full explanation to this offer.

(c) For any subcontract at any tier expected to equal or exceed \$25,000:

(1) In accordance with the provisions of 2 CFR, Part 180, the prospective lower tier subcontractor certifies, by submission of this offer, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to the statement, above, an explanation shall be attached to the offer.

(3) This certification (specified in paragraphs (c)(1) and (c)(2), above) shall be included in all applicable subcontracts and a copy kept on file by the prime contractor. The prime contractor shall be required to furnish copies of the certifications to the Authority upon request.

5. COMMUNICATIONS

(a) All oral and written communications with the Authority regarding this solicitation shall be exclusively with, or on the subjects and with the persons approved by, the persons identified in this solicitation. Discussions with any other person not specified could result in disclosure of proprietary or other competitive sensitive information or otherwise create the appearance of impropriety or unfair competition and, thereby, compromise the integrity of the Authority's procurement system. If competition cannot be resolved through normal communication channels, the Authority's protest procedures shall be used for actual or prospective competitors claiming any impropriety in connection with this solicitation.

(b) By submission of this offer, the offeror certifies that it has not, and will not prior to contract award, communicate orally or in writing with any Authority employee or other representative of the Authority (including Board Members, Capital Metro contractors or consultants), except as described below:

Individual's Name	Date/Subject of Communication

(Attach continuation form, if necessary.)

6. CONTINGENT FEE

(a) Except for full-time, bona fide employees working solely for the offeror, the offeror represents as part of its offer that it (mark one):

has

has not

Employed or retained any company or persons to solicit or obtain this contract, and (mark one):

has
 has not

Paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) The offeror agrees to provide information relating to (a) above, when any item is answered affirmatively.

7. CODE OF CONDUCT

(a) Declaration of Policy: The Capital Metropolitan Transportation Authority ("Capital Metro") Board of Directors, its employees, agents, and contractors must abide by the highest standards of conduct in carrying out Capital Metro's stewardship of public funds in order for the public to be assured that the actions of Capital Metro serve only the Authority's best interests.

(b) Definitions: For the purpose of this Code of Conduct, the following definitions shall apply.

(1) "Affected" means reasonably likely to be subject to a direct economic effect or consequence.

(2) "Agent" means a person authorized by Capital Metro to act for Capital Metro.

(3) "Business entity" means a sole proprietorship, partnership, limited partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized by law through which business is conducted.

(4) "Board of Directors" means the governing body of Capital Metro.

(5) "Confidential information" means any information in Capital Metro's possession, which Capital Metro is legally required or has determined to keep confidential, and which Capital Metro has the legal right to keep confidential.

(6) A Board Member/employee has a "Conflict of Interest" if he/she has a substantial interest in a business entity that will be affected by his or her participation in a vote, decision, recommendation, or action.

(7) A Board Member/employee has a "Conflict of Interest" if he/she has a substantial interest in real property that will be affected by his or her participation in a vote, decision, recommendation, or action and the vote, decision, recommendation, or action will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(8) A Board Member/employee has a "Substantial Interest" in a business entity or real property if:

(i) The interest is ownership of ten (10%) percent or more of the voting stock or shares of the business entity or ownership of ten (10%) percent or more of \$15,000 or more of the fair market value of the business entity;

(ii) Funds received from the business entity exceed ten (10%) percent of the Board Member's/employee's gross income for the previous year;

(iii) The interest in real property is an equitable or legal ownership with a fair market value of \$2,500 or more;

(iv) An organization which employs, or is about to employ, a Board Member/employee who has a substantial interest in the business entity as defined in (i), (ii) and (iii) above; or

(v) One of the following individuals has a substantial interest, as defined in subsections (i), (ii) and (iii) above, in a business entity or real property: an employee's spouse, his/her partner, mother, father, brother, sister, children, aunt, uncle, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, stepchild, stepparents, grandparent, or grandchild. A relationship by marriage will end by death or divorce unless there is a living child or descendent of the marriage.

(9) "Contractor" means a person or business entity that has entered into a contract with Capital Metro to provide goods or services for Capital Metro.

(10) "Employee" means any person holding a position with Capital Metro, for which compensation is received, including part-time workers employed more than ten (10) hours per week or intermittent, seasonal, or temporary workers.

(c) Standards of Conduct: Board members, employees, agents and contractors shall exercise good-faith judgment and uphold the mission of Capital Metro as follows:

(1) Ensure that Capital Metro complies with all applicable laws and regulations;

(2) Adhere to Capital Metro policies and procedures;

(3) Efficiently transact Capital Metro business and safeguard Capital Metro assets from waste, abuse, theft or damage;

(4) Exhibit a desire to serve the public, and display a helpful, tolerant manner;

(5) Treat fellow Board members, employees, agents, contractors and the public with honesty, respect and dignity;

(6) Reveal all material facts known to them when reporting on work projects; and

(7) Disclose immediately any information regarding unethical or wrongful conduct related to Capital Metro transactions to the Board Vice Chair or the Capital Metro Ethics Officer.

(d) Absolute Prohibitions: No Board Members, Employees, Contractors, or Agents shall:

(1) Participate in a contract or real property transaction in which he/she has a substantial interest;

(2) Solicit, accept, or agree to accept any benefit as consideration for his/her decision, vote, opinion or recommendation;

(3) Solicit, accept, or agree to accept any benefit as consideration for his/her violation of any law or duty;

(4) Solicit, accept or agree to accept any benefit from a person that is interested in any Capital Metro contract or transaction;

(5) No Board Member or employee may receive or accept any gift or favor from a contractor or potential contractor of Capital Metro;

(6) Act as a surety for a business that has a contract with Capital Metro;

(7) Disclose or use confidential information that Capital Metro has not made public;

(8) Use his/her official position or employment or Capital Metro's facilities, equipment or supplies to obtain private gain or advantage;

(9) Engage in any transaction or activity or incur an obligation in a business, contract or real property transaction that would conflict with Capital Metro;

(10) Fail to disclose to his/her supervisor or appropriate Capital Metro staff his/her discussions of future employment with any business interested in Capital Metro transactions;

(11) Represent, for remuneration, any person in any proceeding involving Capital Metro's interests;

(12) Capital Metro Board Members, employees, and agents shall not use their authority to unfairly influence other Board Members or other employees or agents to perform illegal, immoral or discreditable acts;

(13) Communicate details of any active Capital Metro procurement or solicitation to any contractor, potential contractor or individual not authorized to receive information regarding the active procurement;

(14) No Board Member or employee shall:

(i) Participate for a business entity in which the employee has a substantial interest if the employee participated in the recommendation, bid, proposal or solicitation

in a Capital Metro contract, procurement or personal administration matter for a period of two (2) years after leaving employment; and

(ii) Receive any pecuniary benefit from a Capital Metro contract or procurement through the ownership of a substantial interest, as defined in Section (b), subsections (6) through (8) above, in a business entity or real property for a period of two (2) years after leaving employment.

(e) Exceptions to Prohibitions: The Prohibitions listed above do not apply to the following:

(1) A gift or other benefit conferred, independent of the Board Member's or employee's relationship with Capital Metro, that is not given or received with the intent to influence the Board Member or employee in the performance of his or her official duties. The Board Vice Chair or the Ethics Officer must be consulted for a determination as to whether a potential gift falls within this exception.

(2) Food, lodging, or transportation in consideration for legitimate services rendered by the Board Member or employee related to his or her official duties.

(f) Disclosure of Conflict of Interest Requirements:

(1) A Board Member or employee must disclose any interest in a business, a contract, or in real property that would confer a benefit by their vote or decision.

(i) A Board Member or employee cannot participate in the consideration of the matter subject to the vote or decision.

(ii) Prior to the vote or decision, the Board Member or employee shall file an affidavit relating to the interest in the business, contract or real property with the Board Vice Chair or Ethics Officer.

(2) A Board Member or employee must disclose the name of a potential employer if the prospective employer has an interest in any Capital Metro transaction upon which the Board Member or employee may be involved.

(g) Penalties: In addition to turning over evidence of misconduct to the proper law enforcement agency when appropriate, the following penalties may be enforced:

(1) The failure of a Board Member to comply with the requirements of this policy shall constitute grounds for censure or removal from the Board in accordance with Section 451.511 of the Texas Transportation Code.

(2) The failure of an employee to comply with the requirements of this policy shall result in disciplinary action up to and including termination.

(3) The failure of an agent or contractor of Capital Metro to comply with this policy shall be grounds for such contractual remedy as may be appropriate up to and including termination of the contract and debarment of the contractor.

(h) By signing below, the offeror certifies and represents that the offeror:

(1) Has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this solicitation;

(2) Has read and is familiar with, and will comply with the Authority's CODE OF CONDUCT, above; and

(3) Will abide by all the terms and conditions contained herein, which apply to and become a part of any contract resulting from this solicitation.

(i) To report suspected ethical abuses or fraud, contact the ethics hotline at (512) 385-0371. It is available 24 hours a day, 365 days a year. All calls are strictly confidential.

(j) In accordance with section 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

9. CERTIFICATION OF RESTRICTIONS ON LOBBYING

This Certification is applicable if the offer exceeds \$100,000.

(a) By submission of this offer, the offeror certifies to the best of the offeror's knowledge or belief that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-L.L.L., "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 or not more than \$100,000 for each such failure.

Signature:

Ryan Williams

Date:

4-22-2015

10. VENDOR PERFORMANCE SCORING

(a) In compliance with the Texas Government Code, Title 10, Subtitle D, Section 2155.074, Section 2155.075, Section 2156.007, Section 2157.003 and Section 2157.125, and Texas Administrative Code, Title 1, Chapter 113.6, information obtained from the Texas Building and Procurement Commission's Vendor Performance Tracking System (VPTS) which may be found at TBPC's website at <http://www.window.state.tx.us> and may be used in evaluating responses to solicitations for goods and services to determine the best value for the Authority.

(b) The offeror certifies to the best of the offeror's knowledge and belief that if listed in the VPTS, neither it nor its principals have, in the last two years, received less than an average vendor performance scoring of 90% in either commodity delivery, service delivery, commodity performance, or service performance categories.

11. SIGNATURE BLOCK FOR ALL REPRESENTATIONS AND CERTIFICATIONS

(a) These representations and certifications concern a material representation of fact upon which reliance will be placed in awarding a contract. If it is later determined that the offeror knowingly rendered an erroneous or false certification, in addition to all other remedies the Authority may have, the Authority may terminate the contract for default and/or recommend that the offeror be debarred or suspended from doing business with the Authority in the future.

(b) The offeror shall provide immediate written notice to the Authority if, at any time prior to contract award, the offeror learns that the offeror's certification was, or a subsequent communication makes, the certification erroneous.

(c) Offerors must set forth full, accurate and complete information as required by this solicitation (including this attachment). Failure of an offeror to do so may render the offer nonresponsive.

(d) A false statement in any offer submitted to the Authority may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

Name of Offeror:

Warco Companies, LLC

Type/Print Name of Signatory:

Ryan Williams

**EXHIBIT E Revised-2
CONTRACTUAL TERMS AND CONDITIONS
(SERVICES CONTRACT)**

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "subcontracts" includes purchase orders under this contract.

(b) In computing any period of time established in this contract, "days" means calendar days, and the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday; in which event the period shall run to the end of the next business day.

(c) Fully burdened hourly labor rate: An hourly rate that includes all salary, overhead costs, general & administrative expenses, and profit.

(d) All capitalized terms not otherwise defined shall have the meaning set forth in Exhibit F.

2. FIXED PRICE CONTRACT

This is a fixed price revenue contract for the services specified and stated elsewhere in the contract.

3. TERM

The term of the contract shall be a minimum base term of twenty (20) years from the contract Notice to Proceed. No work shall be performed under this contract prior to issuance of a Notice to Proceed.

4. OPTION TO EXTEND TERM

(a) The Authority may extend the term of this contract before the contract expires. If feasible, The Authority shall give written notice of its intent to extend before the contract expires. The preliminary notice shall not commit the Authority to an extension and any absence of notice shall not affect the validity of any exercise of option to extend the term of this contract.

(b) There shall be six (6) option periods for a minimum of sixty (60) months duration each.

5. OPTION TO EXTEND SERVICES

The Authority may require continued performance of any services within the limits and rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Authority may exercise the option by written notice to the Contractor within 60 days.

6. INVOICING AND PAYMENT

(a) Invoices may be submitted once per month, and marked "original" to the attention of:
Accounts Payable
CMTA
P.O. Box 6308
Austin, Texas 78762-6308

(b) Payment shall be made within the time period allowed by law through the Texas Prompt Payment Act - Texas Government Code 2251.021(b). A prompt payment discount may be taken if offered and determined to be advantageous by the Authority.

(c) The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Authority when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50% of the total amount of this contract.

(d) The Base Percent of gross freight revenues fee shall be calculated based on the Gross Freight Revenues received by the Freight Services Contractor during the previous calendar month. The Freight Services Contractor is solely responsible for securing payment from customers in order to pay the Authority on a timely basis.

(e) Except for the terms outlined herein, and incorporated into the Freight Services Contract, the Freight Services Contractor retains the rights to all revenues received by it as part of its freight rail operations and maintenance responsibilities of the Service Property.

7. INSURANCE

Contractor shall furnish proof of Authority-stipulated insurance requirements specified below. Proof of insurance shall be in the form of a certificate executed by an approved insurance company authorized to do business in the State of Texas. The Authority's insurance requirements are:

(a) The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below. The Authority shall be endorsed as an ADDITIONAL INSURED by the Contractor with respect to the contract. In any event, the Contractor shall carry and pay the premiums for insurance of the types and the amounts of not less than the following:

(1) Commercial General Liability Insurance Coverage with limits of not less than One Million and No/100 Dol-

lars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. Such coverage as herein provided shall be extended for and endorsements included as follows:

(i) Extended Coverages.

(A) Contractual Liability covering the Contractor's obligations herein.

(B) Personal Injury Liability extended to claims arising from employees of the Contractor and the Authority.

(ii) Endorsements Included. **The Authority named as ADDITIONAL INSURED.**

(2) Workers' Compensation Insurance: Statutory Workers' Compensation coverage in the State of Texas. Employers Liability Insurance with minimum limits of liability of One Million and No/100 Dollars (\$1,000,000). The Contractor shall cause its insurer for Worker's Compensation Insurance to endorse the Contractor's policy to **waive subrogation against Capital Metropolitan Transportation Authority**, its directors, officers, employees, agents, successors and assigns for any and all claims incurred by the Contractor's employees which arise out of the work under this contract.

(3) Automobile Liability Insurance covering all owned, hired and non-owned automobiles used in connection with work with limits not less than One Million and No/100 Dollars (\$1,000,000) Combined Single Limit of Liability for Bodily Injury and Property Damage. If the Contractor uses the delivery services of a common carrier, then the Automobile Liability insurance will not be required. If the Contractor uses personnel and vehicles provided by the Contractor, then Automobile Liability will be required. Such coverage as herein provided shall **include the Authority as an ADDITIONAL INSURED.**

(4) Railroad Liability Coverage, Railroad liability coverage with limits not less than One Hundred Million and No/100 Dollars (\$100,000,000) including One Million Dollars (\$1,000,000) of self-insured retention (SIR) The Contractor shall be endorsed as a NAMED INSURED by the Authority with respect to the contract.

(b) All required insurance shall be written by an approved insurance company authorized to do business in the State of Texas.

(c) Proof that insurance coverage exists shall be furnished to the Authority by way of a Certificate of Insurance before any part of the contract work is started. The Certificate shall certify the Authority as an ADDITIONAL INSURED with a provision that in case of cancellation or any material change in the coverages stated above, the Authority shall be notified no less than thirty (30) days prior to any such change. The Contractor shall be liable for his subcontractor's insurance coverages of the types and in the amounts stated above, and shall furnish the Authority with copies of such Certificates of Insurance. If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, the Authority may terminate this

contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due Contractor.

(d) If any part of the contract is sublet, the Contractor shall provide the Authority evidence of subcontractors insurance currently in place in the form of an insurance certificate. The Authority may require subcontractors to obtain insurance up to the limits required of the Contractor. In the event a subcontractor is unable to furnish insurance in the limits required under the contract, the Contractor shall endorse the subcontractor as an ADDITIONAL INSURED on Contractor's policies.

(e) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by the Authority. The Authority reserves the right to inspect in person, prior to the commencement of the contract work, all of the Contractor's insurance policy required under this contract.

(f) If the Contractor has procured insurance at the time of the Contractor's submission of his bid, proof of the required insurance should be submitted with the Contractor's bid or proposal. Alternatively, the Contractor is requested to submit evidence of a commitment from an insurance company or companies, or a duly licensed agent, that the Contractor has made arrangements for the required insurance. If the bid or proposal is considered for award, and the Contractor has not previously furnished either the proof of insurance or evidence of commitment, the Contractor will be required to provide proof of the insurance or evidence of a commitment within five (5) days of request. If the Contractor is awarded the bid, and has submitted evidence of commitment rather than proof of the required insurance, the Contractor must furnish proof of the required insurance within five (5) days of the award of the contract. Certificate of Insurance must indicate the contract number and description. The insurance certificate should be mailed to the attention of the buyer who made the request.

(g) The above requirements only represent the minimum insurance coverage acceptable to the Authority and these requirements are not intended to represent the maximum risk involved or the maximum liability of the Contractor.

(h) The Contractor shall be responsible for setting its own requirements, if any, for the kind and amounts of insurance to be carried by its subcontractors in excess of the insurance required by the Authority. No delay in the work caused by the Contractor's enforcements of its subcontractor's insurance requirements shall be excusable delay in the contract.

Additional Insurance Requirements

(i) All Claims incurred by the Freight Services Contractor, outside of the Commuter Rail Territory, shall be the responsibility of the Freight Services Contractor. Any claims incurred inside the Commuter Rail Territory, where the Freight Services Contractor believes that the Commuter Rail Operator Contractor, Capital Metro or one of Capital Metro agents has some liability, shall be adjusted by a TPA (Third

Party Administrator) that is chosen by Capital Metro. Any claim costs incurred within the Commuter Rail Territory, that are either uninsured, or below a deductible, or SIR (self-insured retention) shall be allocated based on the proportional negligence of either the Freight Services Contractor or Commuter Rail Operator Contractor without contribution by the Authority.

(j) With respect to freight train operations in Commuter Rail Territory, claims attributed to track conditions and other right-of-way infrastructure shall be the responsibility of the Commuter Rail Operator Contractor. Claims attributed to improper operation of the freight trains (overloading, poor train handling, locomotive or freight car defect, etc.) shall be the responsibility of the Freight Services Contractor.

(k) The apportioning of liability as decided by the TPA shall be final and undisputable by the Freight Services Contractor and the Commuter Rail Operator Contractor.

(l) Capital Metro reserves the right to annually assess the adequacy of the insurance coverage with respect to the Freight Services Contract to determine if operating conditions and associated risks have changed warranting changes in the insurance requirements. The Freight Services Contractor shall provide Capital Metro proof of revised insurance within ninety (90) days of notification by Capital Metro of the new insurance requirements. If the Freight Services Contractor determines that the requested increase in insurance coverage is a material change, the Freight Services Contractor shall follow the Change Procedures outlined in Section 14. **CHANGES.**

8. REPRESENTATIONS

Contractor represents that the Services shall be performed in conformity with the descriptions and other data set forth in this contract and with sound professional principles and practices in accordance with accepted industry standards, and that work performed by Contractor's personnel shall reflect sound professional knowledge, skill and judgment. If any breach of the applicable standard of professional care is discovered by the Authority during the process of the work or within one year after acceptance of the work by the Authority, Contractor shall again cause the nonconforming or inadequate Services to be properly performed at Contractor's sole expense and shall reimburse for costs directly incurred by the Authority as a result of reliance by the Authority on services failing to comply with the applicable standard of professional care.

9. INDEPENDENT CONTRACTOR

Contractor's relationship to the Authority in the performance of this Agreement is that of an independent contractor. The personnel performing services under this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of the Authority. Contractor shall be fully liable for all acts and omissions of its employees, subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with contract requirements. There shall be no contractual relationship between any subcontractor or supplier of

Contractor and the Authority by virtue of this contract. No provision of this contract shall be for the benefit of any party except the Authority and Contractor. Contractor shall pay wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

10. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

11. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to by the Authority in connection with the award of this contract. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Authority.

12. PERSONNEL ASSIGNMENTS

(a) Contractor shall perform the Services in an orderly and workmanlike manner, and shall employ persons skilled and qualified for the performance of the Services assigned to such persons under the contract. The Authority will have the right to review the experience and personnel records of each candidate, and approve assignments of Contractor's personnel.

(b) Contractor certifies that contractor has established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that contractor conducts criminal history checks on its assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this contract whose criminal backgrounds are appropriate for the work being performed, considering the risk and liability to the contractor and the Authority. The Authority reserves the right to require contractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

(c) Contractor shall provide a list of candidates to be used to provide the Services and shall certify that a criminal history background check has been completed within the preceding 6 month period. Criminal background checks shall include the following:

(1) State Criminal History: Contractor shall research criminal history, including driving records (where applicable), covering all jurisdictions within the state, including local counties and municipalities.

(2) Out of State Criminal History: Contractor shall research criminal history, including state driving records (where applicable), for all 50 states.

(3) Military Discharge: For any candidates that have served in the military, contractor shall review the DD Form 214 "Certificate of Release or Discharge from Active Duty" (Long Form).

This contract may include services in the following job categories. For each of the job categories, Contractor shall disclose the type of offense to the Authority according to the timetable below:

Personnel whose work assignment occurs on Capital Metro Property:	
Crimes against the Person (other than sex offences):	
Felony	Submit to Capital Metro for review if less than 10 years from date of release
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Crimes Against the Person – Sex Crimes:	
All	Submit to Capital Metro for review
Crimes Against Property:	
Felony	Submit to Capital Metro for review if less than 10 years from date of release
Drug Crimes:	
Felony	Submit to Capital Metro for review if less than 10 years from date of release
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction
Non-management personnel who have ANY access to Capital Metro or customer FINANCIAL information or cash (other than operators), including payroll, procurement, data analysis:	
Crimes against Property (specifically financial crimes, fraud, deception):	
Felony	Submit to Capital Metro for review if less than 10 years from date of release
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor ONLY IF HANDLE CASH	Submit to Capital Metro for review if less than 5 years from date of conviction

Security Sensitive Personnel or other Contractor Personnel who have access to Capital Metro employee information:	
Crimes against Property (specifically financial crimes, fraud, deception):	
Felony	Submit to Capital Metro for review if less than 10 years from date of release
Class A or B Misdemeanor	Submit to Capital Metro for review if less than 7 years from date of conviction
Class C Misdemeanor	Submit to Capital Metro for review if less than 5 years from date of conviction

Contractor may not assign an employee to provide Services if the employee has any conviction in the applicable job categories listed above, unless an exception is granted by the Authority in accordance with subsection (d).

(d) Contractor may request the Authority perform an individual assessment of a candidate with a criminal conviction meeting one of the above categories. In conducting an individual assessment the Authority's review will include, but not be limited to, the following factors:

- (1) The nature and gravity of the offense or conduct
- (2) The degree of harm caused by the offense or conduct
- (3) The time that has elapsed since the conviction or completion of probation or jail time
- (4) The nature of the job sought, including the job duties, environment and level of supervision
- (5) Any incorrect criminal history
- (6) Wrongful identification of the person
- (7) The facts and circumstances surrounding the offense or conduct
- (8) The number of offenses for which the candidate was convicted
- (9) The subsequent conviction for another relevant offense
- (10) The age of the person at the time of conviction or completion of probation or jail time
- (11) Evidence that the person performed the same type of work, post-conviction, with the same or different employer, with no known incidents of criminal conduct
- (12) The length and consistency of employment history before and after the conviction in a similar field as the current position sought

- (13) Rehabilitation efforts, e.g., education, treatment, training
- (14) Employment or character references and any other information regarding fitness for the particular position
- (15) Whether the person is bonded or licensed under any federal, state or local program or any licensing authority
- (16) The person's statement of the circumstances surrounding the offense and conviction and relevant factors is consistent with publicly available record related to the crime and conviction, and
- (17) Any other factors deemed relevant in the consideration of a particular assessment.

At the time a request is made for an individual assessment, contractor must include the following documentation:

- the candidate's application/resume;
- a copy of the criminal conviction history, including those tried in a military tribunal;
- available court information related to the conviction;
- any publicly available information related to the offense and conviction;
- a statement from the candidate addressing any/all factors set forth above and explaining why the person is qualified for the assignment notwithstanding the conviction; and
- a statement from the candidate explaining why the person is an acceptable risk for the work to be performed by the candidate.

The Authority will provide a written decision to Contractor within five (5) working days of receipt of all required documentation from Contractor.

(e) Contractor will periodically conduct new criminal history background checks on all assigned personnel to ensure the preceding criterion are still met by the assigned personnel and notify the Authority if an employee has a subsequent conviction (or change in driving record, as applicable) that requires further review by the Authority using the criterion set forth above. The Authority reserves the right to request that the assigned individual be removed from performing work under this contract.

13. BADGES AND ACCESS CONTROL DEVICES

(a) Each contractor employee shall be required to wear a Capital Metro Contractor Photo Identification Badge at all times while on the Authority's premises. The badge will be provided by Capital Metro. If contractor employee loses or misplaces their badge, contractor will be charged a \$50.00 replacement fee for each lost or misplaced badge. This fee will be deducted from the contractor invoice. If contractor fails to return all badges provided for their employees upon

completion of the contract or termination of the contractor's employee, contractor will pay a \$50.00 per badge fee deducted from their final invoice. Badges should be returned to the Project Manager. All requests for new and replacement badges must be submitted in writing by the Project Manager to the Manager of Security or Project Manager of Security

(b) Access Control Devices will be issued to contractor employees as necessary to perform the duties specified in the contract. Access Control Devices are not transferable between contractor employees. Contractor employees are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with the Project Manager and the Manager of Security or the Project Manager of Security.

Lost Access Control Devices must be reported to the Project Manager, the Manager of Security or the Project Manager of Security immediately. If contractor fails to return all Access Control Devices provided for their employees upon completion of the contract or termination of the contractor's employee replacement cost shall be calculated at current market value to include labor and materials. Replacement key costs shall be deducted from the contractor current or final invoice. Misuse of Capital Metro key(s) may result in termination of the contract.

14. CHANGES

(a) Offerors are expected to examine the Schedule, Solicitation Instructions and Conditions, Contractual Terms and Conditions, all drawings, specifications, the Statement of Work, and all other provisions of, and exhibits to, the solicitation, whether incorporated by reference or otherwise, prior to the submission of offers. Failure to do so shall be at the offeror's risk.

(b) The Authority may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract.

(c) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Authority.

15. TERMINATION FOR DEFAULT

(a) The Authority may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in either one of the following circumstances:

- (1) if the Contractor fails to make delivery of the supplies or to perform the service within the time specified herein or any extension thereof; or

(2) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure.

(b) In the event the Authority terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Authority for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this contract to the extent, if any, it has not been terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, the following: acts of God or of the public enemy, acts of the Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; provided, however, in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Authority, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority (i) any completed supplies and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Authority, protect and preserve property in possession of the Contractor in which the Authority has an interest. Payment for completed supplies delivered to and accepted by the Authority shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Authority and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the Authority. Failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract. The Authority may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Authority determines to be necessary to protect the Authority

against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be those provided in the Termination for the Convenience of the Authority Clause hereof. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(f) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. Time is of the essence for all delivery, performance, submittal, and completion dates in this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

16. TERMINATION FOR CONVENIENCE

The Authority may, whenever the interests of the Authority so require, terminate this contract, in whole or in part, for the convenience of the Authority. The Authority shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(a) The Contractor shall incur no further obligations in connection with the terminated work, and, on the date set forth in the notice of termination, the Contractor will stop work to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Authority may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the Authority. The Contractor must still complete the work not terminated by the notice of termination and may incur such obligations as are necessary to do so.

(b) The Authority may require the Contractor to transfer title and deliver to the Authority in the manner and to the extent directed by the Authority: (i) any completed supplies; and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Authority, protect and preserve property in the possession of the Contractor in which the Authority has an interest. If the Authority does not exercise this right, the Contractor shall use its best efforts to sell such supplies and manufacturing materials.

(c) The Authority shall pay the Contractor the following amounts:

(1) contract prices for supplies or services accepted under the contract;

(2) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages), less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(3) costs of settling and paying claims arising out of the termination of subcontracts (these costs must not include costs paid in accordance with subparagraph (2) of this paragraph); and

(4) the reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

(5) The total sum to be paid the Contractor under this section shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under this paragraph, and the contract price of work not terminated.

17. CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Agreement have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

18. DRAWINGS AND OTHER DATA

All designs, drawings, specifications, notes, documents, reports, data, graphs, and other works developed in the performance of this contract shall become the sole property of the Authority and may be used in any manner by the Authority and without additional compensation to the Contractor. The Authority shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights or establish any claim under the design patent or copyright laws. The Contractor, for a period of three (3) years after completion of the project, agrees to retain all works developed in the performance of the contract and to furnish all retained works to the Authority upon the Authority's request. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

19. STANDARDS OF PERFORMANCE

The Contractor shall perform all work hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law to be performed by such personnel.

20. INSPECTIONS AND APPROVALS

(a) All work performed by Contractor or its subcontractors or consultants shall be subject to the inspection and approval of the Authority at all times, but such approval shall not relieve Contractor of responsibility for the proper performance of the Services. Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the work and shall furnish all information concerning the work and give the Authority or its representatives free access at all reasonable times to the facilities where the Services are performed.

(b) "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(c) The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards and the contract requires.

(d) The Authority has the right to inspect and test all services called for by this contract, to the extent practicable, at all times and places during the term of the contract. The Authority shall perform inspections and tests in a manner that will not unduly delay the work.

(e) If any of the services do not conform with contract requirements, the Authority may require the Contractor to perform the services again in conformity with the contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Authority may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails promptly to perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of such service or (2) terminate the contract for default.

(g) The Freight Services Contractor shall facilitate inspections of the Service Property, exclusive of the Commuter Rail Territory, as required by the Federal Railroad Administration, other regulatory bodies, government agencies and insurance agencies.. The Freight Services Contractor shall notify Capital Metro immediately of any requested inspection and shall permit representatives from Capital Metro to attend [CDRL 14-21]. The Freight Services Contractor shall provide access to all documents related to any inspection.

(h) Any and all inspections required under this Contract that occur within the Commuter Rail Territory shall be coordinated with Capital Metro and the Commuter Rail Operator Contractor.

(i) The Freight Services Contractor shall permit, upon reasonable notice, inspection of the Service Property, exclusive of the Commuter Rail Territory, the rolling stock and maintenance equipment, and the operating and maintenance practices of the Freight Services Contractor or its subcontractors performing work.

(j) The Freight Services Contractor shall provide the Authority with copies of all reports from inspections and safety orders from any and all regulatory agencies [CDRL 14-46] as an attachment to the appropriate Monthly Operating Report.

21. SUSPENSION OF WORK

(a) The Authority may order the Contractor in writing to suspend all or any part of the work for such period of time as the Authority determines to be appropriate for the convenience of the Authority.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Authority in the administration of this contract, or by the Authority's failure to act within the time specified in this contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Authority in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

22. FEDERAL, STATE AND LOCAL TAXES

Personal property furnished or used in this contract will be exempt from the Limited Sales and Excise and Use Tax imposed, Texas Tax Code, Section 151.009, and certain other taxes. Contractor shall obtain instructions for the issuance of and exemption certificate from the local office of the State

Comptroller of Public Accounts or other tax offices. Any such taxes included on any invoice or voucher received by the Authority shall be deducted from the amount of the invoice or voucher for purposes of payment.

23. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. Offeror shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, promotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall retain and make available to the Authority records showing compliance with this Section and with Section 32, Examination and Retention of Records, for three (3) years after completion of a project, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

24. CONFLICT OF INTEREST

(a) Reference is made to Exhibit B, Representations and Certifications, Code of Conduct, which is incorporated herein and made a part of this contract. Capitalized terms used in this clause and not otherwise defined shall have the meanings as described to them in the Code of Conduct.

(b) Contractor represents that no Employee has a Substantial Interest in Contractor or this contract, which Substantial Interest would create or give rise to a Conflict of Interest. Contractor further represents that no person who has a Substantial Interest in the Contractor and is or has been employed by the Authority for a period of two (2) years prior to the date of this contract has or will (1) participate, for Contractor, in a recommendation, bid, proposal or solicitation on any Authority contract, procurement or personnel administration matter, or (2) receive any pecuniary benefit from the award of this contract through an ownership of a Substantial Interest (as that term is defined in Section II, subsections (1) and (3) of the Code of Conduct) in a business entity or real property.

(c) Contractor agrees to ensure that the Code of Conduct is not violated as a result of Contractor's activities in connection with this contract. Contractor agrees to immediately inform the Authority if it becomes aware of the existence of any such Substantial Interest or Conflict of Interest, or the existence of any violation of the Code of Conduct arising out of or in connection with this contract.

(d) The Authority may, in its sole discretion, require Contractor to cause an immediate divestiture of such Substantial Interest or elimination of such Conflict of Interest, and failure of Contractor to so comply shall render this contract voidable by the Authority. Any willful violation of these provisions, creation of a Substantial Interest or existence of a Conflict of

Interest with the express or implied knowledge of Contractor shall render this contract voidable by the Authority.

(e) In accordance with section 176.006, Texas Local Government Code, "vendor" is required to file a conflict of interest questionnaire within seven business days of becoming aware of a conflict of interest under Texas law. The conflict of interest questionnaire can be obtained from the Texas Ethics Commission at www.ethics.state.tx.us. The questionnaire shall be sent to the Authority's Contract Administrator.

25. GRATUITIES

The Authority may cancel this Agreement, without liability to Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any Authority official or employee with a view toward securing favorable treatment with respect to the performance of this Agreement. In the event this Agreement is canceled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

26. PUBLICATIONS

All published material and written reports submitted under this project must be originally developed material unless otherwise specifically provided in the contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

27. REQUEST FOR INFORMATION

(a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this contract to any party other than the Authority and its authorized agents except as otherwise provided by this contract or after obtaining the prior written permission of the Authority.

(b) This contract, all data and other information developed pursuant to this contract shall be subject to the Texas Public Information Act. The Authority shall comply with all aspects of the Texas Public Information Act.

(c) The Contractor is instructed that any requests for information regarding this contract and the Deliverables shall be referred to the Authority.

28. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

(a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of the Authority upon receipt.

(b) All documents, reports, data, graphics and other materials produced under this contract shall become the sole possession of the Authority upon receipt and payment, subject

only to Contractor's professional obligation to maintain copies of its work product.

29. LIMITATION OF LIABILITY

In no event shall the Authority or its officers, directors, agents or employees be liable in contract or tort, to Contractor or its subcontractors for special, indirect, incidental or consequential damages, resulting from the Authority's performance, nonperformance, or delay in performance of its obligations under this contract, or the Authority's termination of the contract with or without cause, or the Authority's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. Contractor shall include similar liability provisions in all its subcontracts.

30. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental provisions, regulations or standards prevailing during the term of this Agreement. Contractor shall obtain any permits or licenses necessary for the performance of the Services.

31. CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor, the Contractor shall give written notice thereof, to the Authority within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Capital Metropolitan Transportation Authority, 2910 East Fifth Street, Austin, Texas 78702.

32. ASSIGNMENT

This contract shall be binding upon the parties, their successors, and assignees; provided, however, that neither party shall assign its obligations or delegate its duties hereunder without the prior written consent of the other. Any attempted assignment or delegation without written consent shall be void and ineffective.

33. LICENSES AND PERMITS

The Contractor shall, without additional expense to the Authority, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the performance of work or to the products or services to be provided under this contract including, but not limited to, any laws or regulations requiring the use of licensed subcontractors to perform parts of the work.

34. NOTICE OF LABOR DISPUTES

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor immediately shall give notice, including all relevant information, to the Authority.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract under which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

35. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this contract or the work hereunder which the Contractor or any of its subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by the Authority prior to release.

36. INDEMNITY

(a) Contractor hereby agrees to indemnify, hold harmless and defend the Authority and each of its affiliates and each of the Authority's and such affiliates' officers, directors, employees, agents, representatives, successors, assigns, customers, invitees and guests (the Authority and each such person or entity is an "Indemnified Party") against any and all Damages directly or indirectly resulting from, related to, arising out of or attributable to any action, inaction, breach, inaccuracy, failure to perform, failure to comply, default, violation, interference with, termination or cancellation by or through the Contractor or any subcontractor, officer, director, employee, agent, representative, successor, assignee, customer, invitee, or guest of the Contractor or any subcontractor of the Contractor.

(b) For purposes of this Contract, (i) "Damages" means any and all direct or indirect losses, damages (including, without limitation, incidental, consequential, lost profits, indirect, punitive or exemplary damages), Liabilities, payments, obligations, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including, without limitation, fees and expenses of attorneys, accountants, and other professional advisors and of expert witnesses and other costs (including, without limitation, the allocable portion of any Indemnified Party's internal costs) resulting from, related to, arising out of, attributable to with any Action or Threatened Action of any kind or nature whatsoever, (ii) "Liabilities" means any and all liabilities or obligations, whether known or unknown, asserted or unasserted, absolute or contingent, matured or unmatured, conditional or unconditional, latent or patent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, (iii) "Action" means any action, appeal, petition, pleas, charge, complaint, claim, suit, demand, litigation, arbitration, mediation, hearing, inquiry, investigation or similar event,

occurrence or proceeding, (iv) "Threatened" means a demand or statement has been made (orally or in writing) or a notice has been given (orally or in writing), or any other event has occurred or any other circumstances exist that would lead a prudent person or entity to conclude that an Action or other matter is likely to be asserted, commenced, taken or otherwise pursued in the future, (v) "Law" means any law (statutory, common, or otherwise), constitution, treaty, convention, ordinance, equitable principle, code, rule, regulation, executive order, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Body, each as amended and now and hereinafter in effect, (vi) "Governmental Body" means any legislature, agency, bureau, branch, department, division, commission, court, tribunal, magistrate, justice, multi-national organization, quasi-governmental body, or other similar recognized organization or body of any federal, state, county, municipal, local, or foreign government or other similar recognized organization or body exercising similar powers or authority, (vii) "Order" means any order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction, or other similar determination or finding by, before, or under the supervision of any Governmental Authority, arbitrator, or mediator, (viii) "Permit" means any permit, license, certificate, approval, consent, notice, waiver, franchise, registration, filing, accreditation, or other similar authorization required by any Law, Governmental Body, or contract, any "Person" means any individual, partnership, limited liability company, corporation, association, joint stock company, trust, entity, joint venture, labor organization, unincorporated organization, or Governmental Body.

(c) If any Action is commenced that may give rise to a claim for indemnification (an "Indemnification Claim") by any Indemnified Party against Contractor, then such Indemnified Party will promptly give notice to Contractor after such Indemnified Party receives notice of such Action. Failure to notify Contractor will not relieve Contractor of any liability that it may have to any Indemnified Party, except to the extent the defense of such Action is materially and irrevocably prejudiced by the Indemnified Party's failure to give such notice.

(d) Contractor will have the right to defend against an Indemnification Claim, with counsel of its choice that is satisfactory to the Indemnified Party if (i) within 10 days following the receipt of notice of the Indemnification Claim, the Contractor notifies the Indemnified Party in writing that the Contractor will indemnify the Indemnified Party from and against the entirety of any Damages the Indemnified Party may suffer resulting from, relating to, arising out of, or attributable to the Indemnification Claim, (ii) the Contractor provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Contractor will have the financial resources to defend against the Indemnification Claim and pay, in cash, all Damages the Indemnified Party may suffer resulting from, relating to, arising out of, or attributable to the Indemnification Claim, (iii) the Indemnification Claim involves only money Damages and does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the Indemnification Claim is not in the good faith judgment of the Indemnified Party likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party,

and (v) the Contractor continuously conducts the defense of the Indemnification Claim actively and diligently.

(e) So long as the Contractor is conducting the defense of the Indemnification Claim in accordance with the immediately preceding paragraph the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Indemnification Claim, (ii) the Indemnified Party will not consent to the entry of any Order with respect to the Indemnification Claim without the prior written Consent of the Contractor (not to be withheld unreasonably), and (iii) the Contractor will not consent to the entry of any Order with respect to the Indemnification Claim without the prior written Consent of the Indemnified Party (not to be withheld unreasonably, provided that it will not be deemed to be unreasonable for an Indemnified Party to withhold its Consent (A) with respect to any finding of or admission (1) of any breach or violation of any Law, Order or Permit, (2) of any violation of the rights of any Person, or (3) which Indemnified Party believes could have an adverse effect on any other Actions to which the Indemnified Party or its affiliates are party or to which Indemnified Party has a good faith belief it or any of its affiliates may become party, or (B) if any portion of such Order would not remain sealed). If any condition in the immediately preceding paragraph is or becomes unsatisfied, (i) the Indemnified Party may defend against, and consent to the entry of any Order with respect to an Indemnification Claim in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any Consent from, the Contractor in connection therewith), (ii) the Contractor will jointly and severally be obligated to reimburse the Indemnified Party promptly and periodically for the Damages relating to defending against the Indemnification Claim, and (iii) the Contractor will remain jointly and severally Liable for any Damages the Indemnified Party may suffer relating to the Indemnification Claim to the fullest extent provided in this Section 36.

(f) The Contractor hereby consents to the non-exclusive jurisdiction of any Governmental Body, arbitrator, or mediator in which an Action is brought against any Indemnified Party for purposes of any Indemnification Claim that an Indemnified Party may have under this Contract with respect to such Action or the matters alleged therein, and agrees that process may be served on the Contractor with respect to such claim anywhere in the world.

The indemnification obligations and rights provided for in Section 36 of this contract will be applicable whether or not the sole, joint, or contributory negligence of any Indemnified Party is alleged or proven. The Contractor and the Authority agree that all of the provisions of the immediately preceding sentence are conspicuous.

37. MAINTENANCE OF RECORDS

All associated records required by this contract or by law shall be maintained for three (3) years after completion of a project, or until an audit is completed and all questions, claims, disputes, negotiations, and other actions arising therefrom are resolved, whichever occurs last. Additional retention periods may be required as appropriate and stipulated in writing.

38. EXAMINATION AND RETENTION OF RECORDS

(a) The Authority and its representatives shall have audit and inspection rights described below.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times at the Contractor's plants, or such parts thereof, as may be engaged in or maintain records in connection with the performance of this contract.

(c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this contract or if the Contractor's cost of performance is relevant to any change or modification to this contract, the Authority and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.

(d) The materials described in (b) and (c), above, shall be made available at the office of the Contractor at all reasonable times for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this contract, except that if this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any final settlement.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts exceeding \$25,000 hereunder, altered to reflect the proper identification of the contracting parties and the Authority under the prime contract.

39. EXCUSABLE DELAYS

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Authority in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless –

(1) the subcontracted supplies or services were obtainable from other sources;

(2) The Authority ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon the request of the Contractor, the Authority shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of the Authority under the Termination clause of this contract.

40. LIQUIDATED DAMAGES

(a) Liquidated damages will be assessed against Contractor for failure to comply with the following Summary of Liquidated Damages. The liquidated damages shall be in addition to excess costs under the Termination clause.

Summary of Liquidated Damages

Exhibit E		
Section 53	For each calendar day following termination of the Freight Services Contract that Contractor fails to receive and exercise discontinuance authority	\$1000/day
Exhibit F		
Sect. 11.4.3	Change in Management	\$25,000
Sect. 11.9.2	Removal of Wrecks & Derailments	\$5,000/day
Sect. 11.14.9	Maintenance Deficiencies	\$500/day

The parties agree that the liquidated damages represent an estimate of actual damages and are not intended as a penalty.

(b) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Termination for Default clause in this contract.

41. LOSS OR DAMAGE TO PROPERTY

The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to the Authority or to any other individual or organization, if any such loss or damage was caused by Contractor or any employee thereof, while such

employee is on the premises of the Authority as an employee of the Contractor.

42. CONTRACTOR CONTACT/AUTHORITY DESIGNEE

The Contractor shall provide the Authority with a telephone number to ensure immediate communication with a person (not a recording) anytime during contract performance. Similarly, the Authority shall designate an Authority representative who shall be similarly available to the Contractor.

43. QUALITY ASSURANCE

A daily review of the Contractor's scheduled work will be performed by the Authority. If work is deemed incomplete or unacceptable in any way, the Authority will determine and cause and require the Contractor to take corrective measures in accordance with the terms of the contract.

44. NONWAIVER OF RIGHTS

Failure or delay of the Authority (a) to insist in any one or more instances upon performance of any of the terms and conditions of this contract or (b) to exercise any rights or remedies, or (c) to approve the Services shall not release Contractor from any of its obligations under this contract and shall not be construed as a waiver or relinquishment of the Authority's rights (a) to require strict performance of Contractor's obligations or (b) to require the future performance of any terms and conditions, but the Contractor's obligations with respect to such performance shall continue in full force and effect.

45. INTERPRETATION OF CONTRACT – DISPUTES

All questions concerning interpretation or clarification of this contract or the acceptable fulfillment of this contract by Contractor shall be immediately submitted in writing to the Authority's Contracting Officer for determination. All determinations, instructions, and clarifications of the Contracting Officer shall be final and conclusive unless the Contractor files with the Capital Metro President/CEO within two weeks after the Authority notifies Contractor of any such determination, instruction or clarification, a written protest, stating in detail the basis of the protest. The President/CEO shall consider the protest and notify the Contractor within two weeks of the protest filing of his final decision. The President/CEO's decisions shall be conclusive subject to judicial review. Notwithstanding any disagreement the Contractor may have with the decisions of the President/CEO, Contractor shall proceed with the Services in accordance with the determinations, instructions, and clarifications of the President/CEO. Contractor shall be solely responsible for requesting instructions or interpretations and liable for any cost or expenses arising from its failure to do so. Contractor's failure to protest the Contracting Officer's determinations, instructions, or clarifications within the two week period shall constitute a waiver by Contractor of all of its rights to further protest.

46. TOBACCO FREE WORKPLACE:

(a) Definitions:

(1) **Tobacco products:** Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.

(2) **Capital Metro Property:** The following tobacco free workplace policy refers to all Capital Metro owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.

(b) Policy:

Capital Metro is committed to providing a safe and healthy worksite and promoting the health and well-being of its employees. Personal health hazards related to tobacco products are numerous and have been well documented. The health hazards related to tobacco use impact both users and non-users who are exposed to second-hand smoke. We care about the health of each and every employee, and our intent is to provide all employees and visitors with a work environment conducive to good health.

(1) The purpose of this policy is to promote a healthy environment for all employees and visitors by:

- (i) Protecting employees and visitors from second hand smoke
- (ii) Encouraging tobacco users to quit tobacco use
- (iii) Lowering health plan costs

(2) Tobacco use is not permitted at any time, on Capital Metro owned or leased property, including personal vehicles parked in Capital Metro parking lots.

(3) There will be no designated tobacco use areas on Capital Metro owned or leased property, since no level of tobacco exposure is considered to be safe.

(4) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

(5) Capital Metro strives to be a good neighbor in the community, and as such we discourage the use of tobacco products on the property of nearby businesses and residences.

47. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of the solicitation (including any resulting contract), the inconsistency shall be resolved by giving precedence in the following order: (1) the Schedule; (2) Solicitation Instructions and Conditions; (3) Contractual Terms and Conditions; (4) other provisions of the contract whether incorporated by reference or otherwise; and (5) the specifications or statement of work.

48. GOVERNING LAW

The rights, obligations, and remedies of the parties shall be governed by the laws of the State of Texas. Whenever there

is no applicable state statute or decisional precedent governing the interpretation of, or disputes arising under or related to, this contract, then federal common law, including the law developed by federal boards of contract appeals, the United States Claims Court (formerly the Court of Claims), and the Comptroller General of the United States, shall govern. Venue for any action shall lie exclusively in Travis County, Texas. This is the complete agreement between the parties. If any provision of the contract is found to be invalid or unenforceable, the remaining provisions shall not be impaired.

49. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

(a) This contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.5.

(b) For the purposes of this clause, the term "contractor" means the contractor, its subsidiaries and affiliates, joint ventures involving the contractor, any entity with which the contractor may hereafter merge or affiliate and any other successor or assignee of the contractor.

(c) The Contractor acknowledges the full force and effect of this clause. It agrees to be bound by its terms and conditions and understands that violation of this clause may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to the Authority in the event the Contractor breaches this or any other Organizational Conflict of Interest clause.

50. NO THIRD PARTY BENEFICIARIES

No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

51. RIGHTS OF CAPITAL METRO

In addition to the rights and obligations of the Authority stated elsewhere in the Freight Services Contract defined in Exhibit F, the Authority has the following rights with respect to oversight and monitoring of the Freight Services Contractor's performance under this Contract.

(a) **Approval** - Except for specific exclusions under this Contract, Capital Metro retains the right to approve work and materials used by the Freight Services Contractor in the performance of the services required under this Contract.

(b) **Audit and Inspect** - Capital Metro, or its representatives, shall be permitted to inspect, monitor and audit the performance of the Freight Services Contractor at any time throughout the term Freight Services Contract or any Freight Services Contract options. This performance audit includes, but is not limited to, inspection of records, inspection of line, and performance of surveys of customers along the line.

Capital Metro shall provide reasonable notice to the Freight Services Contractor prior to any audit or inspection and conduct all inspections in accordance with the Freight Services Contractor's safety rules and regulations. Inspections of the Service Property will be conducted at least every two (2) years. The FRA class of track of all properties, and the condition of all other applicable structures, within the responsibility of the Freight Services Contractor will be determined by a third party inspector or an FRA inspector. FRA's opinion of all disputes and disagreements related to track class determination shall be final.

(c) Reconciliation - Capital Metro shall have the right to audit, reasonably review and copy all records relating to and the payments required under this Contract. Any discrepancy will be provided in writing to the Freight Services Contractor. The Freight Services Contractor shall have thirty (30) days from receipt of the discrepancy notification to respond to such discrepancy [CDRL 13-01]. This response shall include a statement accepting or disputing the discrepancy. If the Freight Services Contractor accepts the discrepancy, the Freight Services Contractor shall satisfactorily resolve the discrepancy within sixty (60) days of acceptance by Capital Metro. If the Freight Services Contractor disputes the discrepancy, the Freight Services Contractor shall provide appropriate documents to Capital Metro within sixty (60) days of receipt of the original notification [CDRL 13-02]. Capital Metro will review the provided information and determine if the issue is resolved or if a third party review or mediation is warranted.

(d) Other Contracting Rights - Except for exclusions under the Freight Services Contract, Capital Metro reserves the right to contract with another person, corporation or other entity for the performance of any tasks deemed necessary by Capital Metro that are not specifically assigned to the Freight Services Contractor by the Freight Services Contract.

52. PERFORMANCE BOND

The Contractor shall be required to furnish **an annual** Performance Bond, in the amount \$2,000,000. The bonding company providing the bond must be approved for amount of bonds on U.S. Department of Treasury Circular 570 and licensed to do business in the state of Texas. The Performance bond shall be submitted to the Contracting Officer within ten (10) calendar days after receipt of a copy of the executed Contract or a Notice of Award. **Thereafter, the Performance Bond shall be due ninety calendar days prior to the start of each year of the Contract.** The Notice to Proceed will not be issued until a properly executed bond is received and accepted by the Authority.

53. FREIGHT SERVICES LICENSE

(a) As part of the Freight Services Contract, the Authority shall grant to Contractor a license to occupy, operate and maintain the Service Property in accordance with the terms and conditions of the Freight Services Contract (the Freight Services License). The Freight Services License shall grant Contractor: (a) an exclusive right to operate the Freight Services over the Freight Territory; and (b) over the Commuter Rail Territory, to the extent such rights are not otherwise reserved to Authority or the Commuter Rail Operator Contractor, only such rights as are necessary for Contractor to fulfill its obligations pursuant to the Freight Services Contract. The Authority shall grant Contractor the Freight Services License for the sole purpose of Contractor's performance of Contractor's rights and obligations under the Freight Services Contract, and the Freight Services License shall expire or terminate on the date of any expiration or termination of the Freight Services Contract. The Freight Services License shall vest no rights in Contractor in addition to the rights conferred under the terms and conditions of the Freight Services Contract. Contractor shall not make any use of the Service Property inconsistent with Authority's right, title and interest therein, and which may cause the right to use and occupy the Service Property to revert to any party other than Authority. Authority and Contractor shall make all reasonable efforts to defend Authority's title to the Freight Territory against any adverse claims, **such reasonable efforts by Contractor to include, by way of example and not limitation, such actions Contractor would reasonably undertake to protect its interest and obligations in connection with Contractor's performance of the Freight Services, as: (a) promptly notifying Capital Metro of a claim the Contractor may learn about, or (b) cooperating with Capital Metro to provide documentation, such as an affidavit attesting to the Contractor's ongoing rail operations on the Freight Territory, to defend against a claim.**

(b) Upon termination of the Freight Service Contract, Contractor shall promptly obtain and exercise any federal or other regulatory approval as may be required to permit Contractor's discontinuance of the Freight Services. Failure to promptly **request** and exercise any authority described in the previous sentence will cause damages to Authority that are difficult to quantify, and any such failure shall result in the payment by contractor of such liquidated **after the date on which such authority becomes effective.**



Exhibit F – Scope of Services/ Contractor Requirements



FREIGHT OPERATIONS (RFP 131936)

LTK

by:
LTK Consulting Services
d/b/a LTK Engineering Services
Firm #1389
2014 Justin Road, Suite 106
Highland Village, TX 75077

In association with:
Main Line Rail Management
Hayden Consultants

January 28, 2015

Freight Operations

Exhibit F – Scope of Services/ Contractor Requirements

Table of Contents

0	Revision History	vi
1	Definitions/Acronyms	1
2	Description of Line and Service Property	5
2.1	Subdivision Limits	5
2.2	Track Charts.....	6
2.3	Interchanges	6
2.4	Maps	7
3	Current Infrastructure Investments	8
3.1	Freight Train Derailment Risk Reduction Program.....	8
3.2	Current TIGER V Grant Improvements	8
3.3	Positive Train Control	9
4	Current Freight Operations.....	10
4.1	Overview.....	10
4.2	Operating Schedule.....	10
4.2.1	<i>West Subdivision (Sudduth to Leander plus Marble Falls Branch)</i>	10
4.2.2	<i>Central Subdivision (Leander to McNeil Junction to Austin Junction)</i>	11
4.2.3	<i>East Subdivision (Austin Junction to Butler)</i>	11
4.3	Hazardous and/or Placarded Material Movement	11
4.4	Freight Window in Commuter Rail Territory.....	11

4.5	Current Shipments	12
5	Current Commuter Rail and Excursion Passenger Rail Operations	14
5.1	Capital Metro Commuter Rail Service Operating Plan.....	14
5.2	Austin Steam Train Association Passenger Excursion Operations	15
6	Other Subsidiary Users	17
7	Rights of the Freight Services Contractor	18
8	Easements, Leases and Licenses	19
9	Term and Termination.....	20
9.1	Option Terms.....	20
10	Division of Revenue and Charges	21
10.1	Tariffs, Rates and Revenues.....	21
10.2	Base Percent of Gross Freight Revenues Fee	21
10.3	Commuter Rail Territory Per-Car Fees	21
10.4	Commuter Rail Territory Freight Switch Maintenance Fee	21
10.5	Dispatch Fee	21
10.6	Tax Credit.....	21
10.7	Escalation.....	22
11	Contractor Requirements	23
11.1	Common Carrier Obligations	23
11.2	Administration and Management	23
11.3	Standards and Practices	23
11.4	Key Personnel	24
11.4.1	<i>General Manager</i>	24
11.4.2	<i>Other Key Personnel</i>	24

11.4.3	<i>Change in Management</i>	25
11.4.4	<i>Annual Organizational Profile and Chart</i>	25
11.5	<i>Equipment and Facilities</i>	26
11.6	<i>Business Development and Marketing</i>	26
11.6.1	<i>Marketing and Business Development Activities</i>	26
11.6.2	<i>Business Development and Marketing Plan Initial Update</i>	26
11.6.3	<i>Marketing and Business Development Quarterly Report</i>	27
11.6.4	<i>Business Development and Marketing Plan Annual Update and Annual Report</i> 27	
11.7	<i>Accounting Services</i>	27
11.8	<i>Reporting</i>	28
11.8.1	<i>Monthly</i>	28
11.8.2	<i>Quarterly</i>	28
11.8.3	<i>Annual Submissions</i>	28
11.8.4	<i>Situational Reporting</i>	29
11.8.5	<i>Track Charts</i>	30
11.8.6	<i>Document Control</i>	30
11.8.7	<i>Asset Management System</i>	30
11.9	<i>Operations</i>	30
11.9.1	<i>Operating Rules</i>	31
11.9.2	<i>Level of Service Requirements</i>	31
11.9.3	<i>Four-Axle Car</i>	32
11.9.4	<i>Nondiscrimination</i>	32
11.9.5	<i>Safety and Security</i>	32
11.9.6	<i>Timetable Submission</i>	33
11.9.7	<i>Training and Physical Characteristics Qualification</i>	33

11.9.8	<i>Dispatching</i>	34
11.9.9	<i>Capital Metro or Third Party Hi-Rail Trips</i>	34
11.9.10	<i>Employee In Charge within Commuter Rail Territory</i>	34
11.10	Positive Train Control	35
11.11	Bertram Scale	35
11.12	Wide Load Detectors.....	36
11.13	Cooperation with Future Capital Metro Wheel Impact Load Detector(s) Installation.....	37
11.14	Maintenance.....	37
11.14.1	<i>Contractor Responsibility</i>	37
11.14.2	<i>Grade Crossings</i>	38
11.14.3	<i>Grade Crossing Warning Systems</i>	38
11.14.4	<i>Track</i>	40
11.14.5	<i>Bridges</i>	41
11.14.6	<i>Right-of-Way</i>	41
11.14.7	<i>Contractor Owned or Leased Property</i>	43
11.14.8	<i>Maintenance Plan and Program</i>	43
11.14.9	<i>Maintenance Deficiencies</i>	44
11.15	Condition of Service Property.....	44
11.15.1	<i>Day One Conditions Assessment</i>	44
11.15.2	<i>Tie and Timber Condition</i>	45
11.15.3	<i>Track Geometry</i>	45
11.15.4	<i>Bridge Condition</i>	46
11.15.5	<i>Crossing Condition</i>	46
11.15.6	<i>Digital Video</i>	46
11.15.7	<i>Annual and Final Condition Assessments</i>	47

11.15.8	<i>Change in Class</i>	47
11.16	Repairs and Restoration	48
11.17	Improved Property and Capital Investments	48
11.18	Other Freight Railroad Coordination	49
11.19	Commuter Rail Coordination	49
11.20	EIC Support and Coordination	49
11.20.1	<i>Capital Metro Initiated Freight Improvements Within the Service Property</i> .	49
11.20.2	<i>Track Chart Updates</i>	49
11.20.3	<i>High and Wide Detector Installation and Testing</i>	49
11.20.4	<i>Wheel Impact Load Detector Installation and Testing</i>	50
11.20.5	<i>Capital Metro Initiated Crossing Improvements, Non-Freight Related Improvements and Third Party Capital Metro Approved Activities</i>	50
11.21	Contract Document Requirements List for Section 11	50
12	Capital Metro Responsibilities	52
12.1	Excursion Rail	52
12.2	Maintenance of McNeil Junction and Robinson and Abbott Yards 52	
12.3	Security	52

0 Revision History

Revision No.	Date	Description of Revision
0	Jan. 28, 2015	Initial Draft Release

1 Definitions/Acronyms

- a. Asset Management System (AMS) – The Capital Metro database used for monitoring and maintaining parts, equipment and maintenance history. The asset management system supports the process of deploying, operating, maintaining, upgrading and disposing of assets.
- b. ASTA – Austin Steam Train Association
- c. Agreement – Used interchangeably with Contract
- d. Austin Texas Central Railroad - the operating entity of the Austin Steam Train Association
- e. The Authority – Capital Metropolitan Transportation Authority, used interchangeably with Capital Metro
- f. BNSF – BNSF Railway
- g. Capital Metro – Capital Metropolitan Transportation Authority, used interchangeably with the Authority
- h. CMTY – Capital Metro Railroad reporting marks
- i. CDRL – Contract Document Requirements List, the standard format for identifying data requirements in the contract.
- j. Centralized Traffic Control (CTC) – A traffic control system that uses block signal indications to authorize train movement.
- k. Commencement Date - The date when the Freight Services Contractor assumes full responsibility for freight revenue operations on the Service Property.
- l. Commuter Rail Operator Contractor – contractor retained by Capital Metro to operate commuter rail service in the Commuter Rail Corridor. The Commuter Rail Operator Contractor also dispatches all train service and maintains all service property in the Commuter Rail Territory.
- m. Commuter Rail Corridor – The Commuter Rail Corridor is the portion of the Commuter Rail Territory used for Capital Metro MetroRail commuter rail passenger service. This corridor is from MP 87.46 (Bill on the West of the Central Subdivisions) to MP 55.21 DT (Downtown on the Central Subdivision), and between MP 56.64 (Austin Junction on the Central Subdivision) to MP 55.77 (Valley on the Central Subdivision).
- n. Commuter Rail Territory – The Commuter Rail Territory is the portion of the Service Property between MP 55.25 and MP 88.33, distant signal to distant signal, and also includes only the track and associated grade crossing warning devices in and around Abbott and Robinson Yards as well as McNeil Junction.
- o. Contract Options – The extension of the Freight Services Contract and all Contract terms and requirements, unless expressly excluded from option years. The Freight Services Contract Option shall be granted in a minimum of five (5) year increments.
- p. Crossing Vegetation Control Area – The area of the Service Property within 250 feet of the intersection of the centerline of the highway grade crossing and

the centerline of Capital Metro right-of-way that shall be kept clear of vegetation to maintain visibility for both trains and highway traffic.

- q. Day – Calendar days, unless otherwise specified.
- r. Day One Condition – The baseline condition, determined by a mutual assessment of the Service Property, that establishes the level to which the Service Property shall be maintained and the condition in which the Service Property shall be returned at the termination of the Agreement.
- s. Deficiency Notice – A written notification provided by Capital Metro to the Freight Services Contactor outlining any deficiencies and request for corrective action.
- t. Dismissal or Reassignment Notice – A written notification provided by Capital Metro to the Freight Services Contractor requesting dismissal of the General Manager or his/her direct reports.
- u. DMU – Diesel Multiple Unit passenger train.
- v. E-ATC – Enhanced Automated Train Control (ATC), Capital Metro’s planned PTC technology
- w. ENS – Emergency Notification System
- x. EIC – Employee In Charge
- y. FRA – the Federal Railroad Administration of the United States Department of Transportation
- z. Freight Services – The services required under this Agreement as specified in Exhibit F. Services include all functional services, training, maintenance, inspections, repairs, labor, management, marketing and specialized services required to operate freight services on the Service Property and maintain the Service Property, exclusive of the Commuter Rail Territory.
- aa. The Freight Services Contractor – The Freight Services Contractor providing freight services under this Agreement.
- bb. The Freight Services Contract – The document signed by Capital Metro and the Freight Services Contractor outlining the terms and requirements of Capital Metro and the Freight Services Contractor for the freight services requested through this procurement.
- cc. Freight Territory – Portions of the Capital Metro corridor where Commuter Rail does not operate.
- dd. Grade Crossing – A crossing or intersection of a railroad and a highway at the same level.
- ee. Grade Crossing Warning Systems – All systems and elements at a grade crossing including but not limited to gates, circuits, lights, signs, power, train detection, vehicle detection, equipment bungalows, and all other elements utilized as part of a grade crossing warning system.
- ff. Gross Revenue – Gross Revenue means all income produced from the movement of goods across the Service Property. This shall include revenues from both on-line and off-line movements, shipper contract charges surcharges, railcar storage charges, tariffs, switching charges, and equipment

charges. In cases of revenue sharing with connecting carriers, only the revenue portion associated with movement across the Service Property is subject to gross revenue calculation. Specifically excluded is income received from contract car repair or pass-through charges where no net revenue is received.

- gg. Hazardous Materials – Any chemical, material or substance that is now, or at any time under this Agreement, regulated or governed by any law pertaining to explosives, radioactive materials, etiologic agents, flammable or toxic liquids or gases, combustible liquids and materials, oxidizing or corrosive materials, compressed gases or materials that could form toxic gases or liquids or any other material, which when released, would cause significant physical ecological damage.
- hh. *deleted*
- ii. In-Service Track - Track owned by Capital Metro that is available for revenue freight and/or passenger train service and that is regularly inspected and maintained in compliance with FRA requirements.
- jj. Key Personnel – The General Manager and his/her direct reports.
- kk. Mid-day Window – used interchangeable with Mid-day Freight Window; window available on the Commuter Rail Corridor with limited availability for freight service. Requires approval from Commuter Rail Operator Contractor.
- ll. MP – Milepost, a designation of location on the Service Property with or without physical signage adjacent to the track.
- mm. MUTCD – Manual of Uniform Traffic Control Devices
- nn. Notice of Award (NOA) Date – The date of the Contracting Officer's execution of Notice of Award, which is the effective date of the contract. The Freight Services Contractor shall not perform any work under the Freight Services Contract until it receives a written NTP from Capital Metro.
- oo. Notice to Proceed (NTP) Date – The date when the Freight Services Contractor is to start performing and incurring costs by a written NTP letter from the Contracting Officer.
- pp. Off Line Shipment - Any movement via rail freight car that originates or terminates on the Service Property and that is interchanged with BNSF Railway or Union Pacific Railroad.
- qq. On Line Shipment - Any movement via rail freight car that both originates and terminates on the Service Property and that is not interchanged with BNSF Railway or Union Pacific Railroad.
- rr. Other Track Material (OTM) – Materials other than ties and rails, including but not limited to, spikes, tie plates and rail anchors.
- ss. Placarded Materials – Any materials shipped requiring placards indicating the nature of the cargo in accordance with 49 CFR Part 172, Subpart F.
- tt. Positive Train Control (PTC) – The train control system designed to minimize train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place, and the movement through a main line switch in the improper position.

- uu. PTC Contractor – Contractor(s) operating on behalf of Capital Metro in support of the design, installation, integration, and testing of PTC on the Commuter Rail Territory for commuter rail operations.
- vv. Rail Network – All Capital Metro owned rail property, including the Service Property and all out of service segments.
- ww. Right of Way – A strip of land of varying width which Capital Metro owns that contains track and other facilities supporting railroad operations.
- xx. Service Property – All in-service segments of the West, Central and East Subdivisions, including the Commuter Rail Territory, of the Capital Metro rail network. The Service Property includes right-of-way, tracks, rails, ties, ballast, other track materials, switches, public and private crossings, bridges, culverts, buildings, grade-crossing warning devices and any and all improvements or fixtures affixed to the right-of-way within the in-service territory, along with that portion of the right-of-way that supports these installations. The Freight Services Contract
- yy. STB - Surface Transportation Board
- zz. Termination Date – The date of the Freight Services Contract expiration based on the terms of this Agreement.
- aaa. TPA – Third Party Administrator
- bbb. Third Party or Third Parties – Any person(s) and/or entities other than the Freight Services Contractor, Capital Metro, ASTA, Commuter Rail Contract Operator and/or any Capital Metro subcontractor.
- ccc. Track – Rails, ties, ballast, track materials, bridges, switches, culverts, and all other non-land property necessary for the safe movement of trains.
- ddd. Track Warrant Control – A method to authorize train movement or protect workers and machines on a main track within specified limits in a territory designed by the timetable.
- eee. WILD – Wheel Impact Load Detector
- fff. WLD – Wide Load Detector
- ggg. Vegetation – Plants considered collectively especially those found in the Service Property.

2 Description of Line and Service Property

The Authority owns a 162 route-mile common carrier railroad operating through Austin and extending to Llano to the northwest and Giddings to the east. Approximately 113 route-miles of the line are in service and are defined as the Service Property. The system handles about 40,000 freight carloads per year. A map of the Capital Metro Rail Network and connecting lines is provided as Appendix A and shippers along the Service Property is provided in Appendix B.

The portion between downtown Austin and Leander share the corridor with Capital Metro's commuter rail service operated on behalf of the Authority through a third-party Commuter Rail Operator Contractor and operates along the Commuter Rail Corridor within the Commuter Rail Territory. The Commuter Rail Timetable and Timetable Special Instructions are provided as Appendix F. The Austin Steam Train Association (ASTA) also provides excursion passenger rail service within the Service Property. The ASTA schedule is provided as Appendix E.

The defined Service Property that is the subject of this solicitation includes rights-of-way, tracks, rails, ties, ballast, other track materials, switches, public and private crossings, bridges, culverts, buildings, grade crossing warning devices and any and all improvements or fixtures affixed to the right-of-way within the in-service freight territory, along with that portion of the right-of-way that supports these installations. The geographic limits of the Service Property may be expanded by the Freight Services Contractor at the Freight Services Contractor's expense by bringing current out-of- service track in-service. Such change shall be pursuant to the provisions of Sections 6.

The Service Property includes the Commuter Rail Territory; however, unless noted otherwise, maintenance of the Commuter Rail Territory is the responsibility of the third-party Commuter Rail Operator Contractor, not the Freight Services Contractor. Also, the track and associated grade crossing warning devices in and around Abbott and Robinson Yards as well as at McNeil Junction shall be maintained by the Commuter Rail Operator Contractor, not the Freight Services Contractor.

2.1 Subdivision Limits

The Authority's rail network is divided into three subdivisions. The West Subdivision runs between Sudduth and Leander and includes the Marble Falls Branch and the Burnet Spur as well as out of service track to Llano and the out of service Scobee Spur. The Central Subdivision runs from Downtown Station (MP 55.21 DT) to Bill (MP 87.46) and from Austin Junction (MP 56.64 DT) to Valley (MP 55.77).as identified in the CMTY Timetable. The East Subdivision runs between Valley (MP 55.77) and End of Main Track (MP 25.20) and includes out of service track to Giddings. All load limits are based on a four-axle car.

The West Subdivision can accommodate 286,000-pound loads from Marble Falls Junction and Sudduth to Leander, then through to McNeil Junction and Abbott Yard on the Central Subdivision. The remainder of the West Subdivision, including the Marble Falls Branch, is limited to 263,000 pounds. The remainder of the Central Subdivision to Austin Junction, then on to Valley, is 286,000 pound capable, although the Downtown Spur is subject to 263,000-pound limits. The East Subdivision between Valley and Giddings is limited to 263,000-pound loads.

Maximum authorized speed for freight trains on the West Subdivision is 35 mph, with 10 mph limits on the excepted track of the Marble Falls Branch, Burnet Spur, Scobee Spur, and Llano Industrial Track west of MP 124.7, as well as between MP 117.0 and MP 118.0. Train operating authority is provided via Track Warrant Control, with Yard Limits in effect between Gandy and Sudduth.

On the Central Subdivision, maximum authorized speed for freight trains is 40 mph. Between Bill and Robinson, over three miles of the route have 10 mph, 25 mph, or 35 mph restrictions, while between Robinson and Abbott the speeds are limited to 10 mph and 20 mph. From Abbott to Austin Junction, speeds are restricted to 25 mph, while a 10 mph limit is in place on the Downtown Spur. The Central Subdivision is operated under Centralized Traffic Control, with Yard Limits in effect on freight track MT1 between Robinson and Abbott and on the Downtown Spur.

The entire East Subdivision is operated at a maximum authorized speed of 10 mph. Centralized Traffic Control is utilized on the short segment from Austin Junction to Valley, with Yard Limits in effect for a few miles east of Valley. The remainder of the line is operated under Track Warrant Control.

Table 1 – Rail Network Track Class Limits

Subdivisions	Track Limit	Class of Track
West (Scobee to Llano)	MP 127.7 – MP 154.1	Out of Service
West (Sudduth to Scobee)	MP 122.5 – MP 127.7	Excepted
West (Gandy to Sudduth)	MP 116.4 – MP 122.5	Class 1
West (Bill to Gandy)	MP 87.45 – MP 116.4	Class 3
West (Marble Falls Branch)	MP 0.0 – MP 6.1	Excepted
West (Burnet Spur, Wilkie Wye)	MP 114.9 extending for 0.68 miles	Class 1
West (Scobee Spur)	MP 127.7 extending for 3.2 miles	Out of Service
Central (Austin Jct. to Bill)	MP 56.49 – MP 87.45	Class 4
Central (Downtown to Austin Jct.)	MP 55.10 – 56.49	Class 4
Central (Valley to Austin Jct.)	MP 55.77 – 56.49	Class 4
East (Butler to Valley)	MP 25.0 – MP 55.77	Class 1
East (Giddings to Butler)	MP -1.3 – MP 25.0	Out of Service

2.2 Track Charts

The Authority's rail network is further defined in the track charts provided as Appendix C.

2.3 Interchanges

All interchange for freight traffic to and from off-line points occurs at McNeil Junction on the Central Subdivision. The service interchanges with both the Union Pacific Railroad and BNSF Railway, which accesses the interchange via trackage rights. Abbott Yard serves as the primary point of interchange, but some aggregate unit trains are interchanged at a siding on the UP mainline. BNSF currently does not have trackage rights to the UP Interchange Storage Tracks.

The lease agreement between UP and Capital Metro outlines the maintenance responsibilities of each party with respect to the interchange. Capital Metro's financial

responsibilities shall be assumed by the Freight Services Contractor. A copy of the agreement is included as Appendix P.

Any use or restoration of the interchanges at Elgin or Giddings shall be at the sole expense of the Freight Services Contractor. The Contractor will be responsible for maintaining this section for the duration of the contract.

2.4 Maps

A map of the Capital Metro Rail Network detailing connections with existing Class I lines is included as Appendix A.

3 Current Infrastructure Investments

Capital Metro has several projects underway that will benefit the provision of freight service and/or require coordination of the Freight Services Contractor. Completion of these infrastructure projects shall not be the financial responsibility of the Freight Services Contractor, except for the provision of one or more Employees in Charge (EIC) as described in Section 11.20.1. Any of these improvements made to the Service Property, exclusive of the Commuter Rail Territory, shall become the responsibility of the Freight Services Contractor to maintain, repair and restore at the improved condition throughout the life of the Freight Services Contract and any Freight Services Contract options, and returned in the improved condition at the end of the Freight Services Contract term. The Freight Services Contractor shall prepare a revision to the Day One Conditions Assessment report (see Section 11.15.1) to document all improved conditions.

Furthermore, the Freight Services Contractor shall recognize that these improvements, and their associated construction efforts, will be implemented along portions of the Service Property, including areas that the Freight Services Contractor will maintain and operate. As such, the Freight Services Contractor shall coordinate with Capital Metro and its contractors to facilitate the improvements with minimal impact to freight operations and the infrastructure projects. Capital Metro will periodically request the participation of a Freight Services Contractor representative during routine meetings and conference calls to facilitate efficient coordination between all parties and such coordination shall be provided by the Freight Services Contractor at no cost to Capital Metro.

3.1 Freight Train Derailment Risk Reduction Program

Capital Metro has embarked on a Freight Train Derailment Risk Reduction Program intended to target high tonnage locations where tie, rail or subsurface conditions warrant short-term improvements. The Freight Services Contractor shall assume any such maintenance work and maintain, repair and restore at the improved condition, as required and as specified in Section 11.

3.2 Current TIGER V Grant Improvements

Capital Metro has received funding through Tiger V to make improvements to the Service Property. While some of the projects will benefit the Commuter Rail Territory, the funding is primarily for improvements along the freight network. These projects include upgrading the 90# rail, timbering, and surfacing the line between MP 50.4 and MP 52.44 and between MP 121.3 and MP 122.3, as well as extending a siding at Lakeline/Parmer that will be available for both passenger and freight use. Some bridge improvements will also be undertaken as part of the TIGER V grant raising the weight limits of certain bridges between Abbott and Manor to 286,000 pounds based on a four-axle car. The Freight Services Contractor shall recognize that these improvements, and their associated construction efforts, will be implemented along portions of the Service Property, including areas that the Freight Services Contractor will maintain and operate. As such, the Freight Services Contractor shall coordinate with Capital Metro and its Tiger V improvements contractors to facilitate the improvements with minimal impact to freight operations and the infrastructure projects. Capital Metro may periodically request the participation of a Freight Services Contractor representative during routine meetings and conference calls to facilitate efficient coordination between all parties and such coordination shall be provided by the Freight Services Contractor at no cost to Capital Metro.

3.3 Positive Train Control

The Rail Safety Improvement Act of 2008 mandates that most rail networks with passenger and freight trains implement PTC on their networks. Capital Metro has been moving aggressively to plan, design and construct PTC on its shared commuter rail/freight trackage in the Central Subdivision, consistent with the FRA's PTC requirements, published on January 15, 2010. As such, Capital Metro's DMU fleet and the locomotives of the Freight Services Contractor that operate within or through the Central Subdivision must be PTC equipped.

Capital Metro will use Enhanced Automatic Train Control (E-ATC) as its PTC solution for its commuter rail service. Capital Metro will require that the Freight Services Contractor ensure PTC compatibility of its locomotives with the Capital Metro wayside implementation. See Section 11.10 for more information related to PTC.

4 Current Freight Operations

4.1 Overview

The current freight operation serves numerous customers along the Service Property handling about 40,000 freight carloads per year. The current freight services primarily handle large volumes of aggregates traffic originating on the West Subdivision, destined to both Capital Metro East Subdivision and West Subdivision customers, as well as off line destinations. The freight services move relatively small amounts of non-aggregates. McNeil Junction presently serves as the sole interchange point for the Service Property, the UP and BNSF. BNSF unit trains are typically 100 to 102 car trains, while UP unit trains are typically 90 to 95 cars. The present split of unit trains is about 60% UP and 40% BNSF.

Table 2 provides the number of car moves per month on the Service Property for FY2014.

Table 2 – FY 2014 Capital Metro Freight Carload Volumes

	On Line Shipment	Off Line Shipment	Total
October	1,549	2,167	3,716
November	1,131	1,285	2,416
December	932	1,877	2,809
January	1,341	1,553	2,894
February	1,678	1,815	3,493
March	1,606	1,768	3,374
April	1,330	1,876	3,206
May	1,291	2,217	3,508
June	1,901	2,135	4,036
July	1,677	2,149	3,826
August	1,590	1,855	3,445
September	1,434	2,107	3,541
Total	17,460	22,804	40,264

4.2 Operating Schedule

The existing freight operating plan by territory is detailed below by route segment. Subject to the other requirements specified herein, the Freight Services Contractor may change the freight operating plan as it deems appropriate to facilitate enhanced operations.

4.2.1 West Subdivision (Sudduth to Leander plus Marble Falls Branch)

Train 112 (Gandy Switcher) works all of the local industries between Summit and Scobee, as well as the Marble Falls Branch and Wilkie Wye spur, dropping off and picking up the business at Summit Yard. This train also handles Old Castle traffic to and from Seward and Manor. The train is scheduled to start Monday through Friday at 7:00 a.m.

Train 222 (Summit Turn) works industry at Summit and moves traffic from Summit to Abbott Yard. The train returns from Abbott Yard with empties from Manor off of Train 111, as well as interchange carloads and empties from McNeil Junction. The train is scheduled to originate Monday through Friday at 7:00 p.m., and on Fridays at 10:00 p.m.

Train 241 (Extra) works all the local industries on the West Subdivision as needed, with on-duty times varied.

Train 901/902 (Extra) work loaded and empty unit trains between Oldcastle and McNeil Junction, with on-duty times varied.

4.2.2 Central Subdivision (Leander to McNeil Junction to Austin Junction)

Train 300 (Abbott Switcher) works all of the local customers on the Central Subdivision and performs all the inbound and outbound carload interchange with Union Pacific and BNSF. The train is scheduled to start service Monday through Thursday at 6 p.m. with occasional Sunday operation at variable times.

There are no active freight customers on the Downtown Spur.

4.2.3 East Subdivision (Austin Junction to Butler)

Train 111 moves empties from the Oldcastle facility at Manor to Abbott Yard, connecting with Train 222, and returns loads of sand and gravel to Manor. The train is scheduled to start service Monday through Thursday at 6:00 p.m. with a Friday start at 9:30 p.m.

Train 121 (Extra) – works all carload customers on the East Subdivision as needed, with on-duty times varied.

4.3 Hazardous and/or Placarded Material Movement

There is currently no hazardous and/or placarded material movement on the mainline trackage. One on-line customer does receive hazardous materials that are moved within yard limits, moving directly from the UP interchange track to Abbott Yard and then onto customer-owned trackage.

Any movement of hazardous and/or placarded materials requires the prior approval of Capital Metro.

4.4 Freight Window in Commuter Rail Territory

The operations of the freight services in the Central Subdivision are scheduled around the Capital Metro commuter rail services. Capital Metro's commuter rail vehicles (Stadler GTW 2/6 Diesel Multiple Units) are required to be temporally separated from freight trains. By virtue of the temporal separation requirements of the FRA (see Appendix F); freight trains that transit the Central Subdivision are operated at night or on weekends, or within a limited freight "window" during the Monday through Friday midday. This midday window is created by short-turning one of the Capital Metro trips at Howard Lane Station in lieu of the normal midday turn back at Lakeline.

The Freight Services Contractor must request from Capital Metro the use of any midday freight window in advance. Table 3 details the historical midday freight window utilization from its inception in FY 2012 through FY 2014.

Table 3 – Capital Metro Midday Freight Window Utilization

	Days Available	Days Requested	Days Used
FY 2012	67	20	13
FY 2013	235	27	18
FY 2014	222	23	13

Capital Metro commuter rail trains run a normal schedule Monday through Thursday, an extended schedule on Friday, and a limited schedule on Saturday from Downtown (MP 55.21 DT) to Leander (MP 87.02), see Section 5.1 for more details on passenger service operating parameters. A string line chart depicting the service and a current commuter rail schedule are provided as Appendix G. In this chart, commuter rail trains are numbered sequentially for their direction of travel, either north or south. Blue color indicates that the train is traveling on the main line, while green indicates that it is traveling on a siding, either to allow another train to pass, or to enter a two track station where passengers are accustomed to “right hand running”. Dots indicate that the train makes a station stop at a location. Four opposing direction meets occur in normal operation, with commuter rail trains meeting at the sidings at Martin Luther King Jr. Station (MP 58.26), Kramer Station (MP 66.38), Parmer Siding (MP 76.00.) and Leander Station (MP 87.02).

The chart also depicts a typical weekday of freight operation, although freight trains do not operate according to a precise schedule. The lines on the chart representing the movement of freight trains are labeled with the lead locomotive number followed by the freight symbol, for example, “WAMX 4144 AWRR 222”. The red boxes on the string chart represent track warrants for exclusive use of a given track segment for a given time and are labeled with the name of the locomotive to which they were granted. The extent of the box indicates the range of track and duration for which they were granted. Freight trains entering sidings in order to meet an opposing direction train or to access an industrial customer are indicated by the green colored string line.

4.5 Current Shipments

Table 4 provides a summary of freight traffic by customer type.

Table 4 – Annual Freight Traffic

Fiscal Year	Aggregates (freight cars)	Pct. of Total	Others (freight cars)	Pct. of Total
2011	38,420	84.2	7,217	15.8
2012	42,922	88.3	5,705	11.7
2013	36,356	90.5	3,807	9.5
2014	36,314	90.2	3,950	9.8

Table 5 summarizes the origin and destination of the shipments on the Capital Metro freight network for FY 2011 - 2014.

Table 5 – Freight Traffic by Origin/Destination

Fiscal Year	Aggregates Shipments		Other Shipments	
	Off Line	On Line	Off Line	On Line
2011	17,455	24,948	3,234	0
2012	17,163	28,322	3,142	0
2013	20,489	16,180	3,494	0
2014	18,854	17,460	3,950	0

5 Current Commuter Rail and Excursion Passenger Rail Operations

Until 2010, Capital Metro's rail network was used solely by freight trains and occasional passenger excursion trains. On March 22 of that year, Capital Metro began operating commuter rail service utilizing a fleet of six non-FRA compliant Diesel Multiple Units (DMU) between downtown Austin and Leander. Average daily ridership is approximately 3,500 and peak period trains are often filled to capacity with standees. To address capacity constraints, Capital Metro has ordered four more DMUs.

Capital Metro utilizes a commuter rail contractor to operate the commuter rail service within the Commuter Rail Corridor, as well as to maintain the commuter rail vehicles and the rail infrastructure used by both freight and passenger services in the Commuter Rail Territory, which is the Service Property between MP 55.25 and MP 88.33.

Additionally, the Austin Texas Central Railroad, the operating entity of the Austin Steam Train Association (ASTA), operates tourist excursion service primarily on weekends throughout most of the year (See Appendix E).

5.1 Capital Metro Commuter Rail Service Operating Plan

Nine commuter rail stations are in operation with service provided Monday through Saturday, as defined herein. Regular Sunday commuter rail service is not presently offered although some special event service has been provided on a few Sundays annually.

The current FRA required temporal separation of commuter rail and freight operations requires that the commuter rail and freight rail operators coordinate, with the commuter rail service windows having precedence. Commuter rail service operates during peak service hours with 34 minute headways, requiring four trains (each consisting of a single vehicle) to maintain service. The one-way journey time between Leander and Downtown Austin is about one hour.

All commuter rail trains operate into and out of Downtown station on the south end of the commuter rail service. On the north end, some trains turn at Leander, while others turn at Lakeline, Howard or Kramer. Monday through Friday, the first train from Leander operates at 5:55 a.m., while the last train arrives there at 7:23 p.m. However, on the Leander-Lakeline segment, trains are scheduled to operate only between 5:55 and 8:53 a.m. and between 4:24 and 7:23 p.m. Additional time is required to clear the line of commuter rail trains and implement the required temporal separation procedures. During midday hours, commuter rail service operates on one-hour headways between Lakeline and Downtown Austin. Each one-way trip is approximately 47 minutes. Two trains (each consisting of a single DMU) are required to operate the midday service.

On Fridays, normal train service is extended so that the last train arrives at Leander at 1:23 a.m. on Saturday morning. Capital Metro also provides Saturday afternoon and evening service. The first southbound trains depart Kramer at 4:00 p.m., Howard, at 4:27 p.m., and Lakeline at 4:48 p.m., with service continuing until the last northbound train arrives at Lakeline at 12:50 a.m. on Sunday morning. No service is provided between Lakeline and Leander on Saturdays. In addition to the scheduled Monday-Saturday trains, Capital Metro also shuttles non-revenue trains to/from its maintenance facility on the Central Subdivision, running at various times as required.

Capital Metro supports local special events throughout the year with extended commuter rail operating hours, including some Sunday service. Currently, Capital Metro supports five events annually that provide extended service that may limit freight service windows on Saturdays and Sundays. Capital Metro will provide the Freight Services Contractor 14 days notice of such special service.

Capital Metro's commuter rail alignment includes the length of the Central Subdivision from Downtown Station (MP 55.21 DT) to Bill (MP 87.46) and from Austin Junction (MP 56.64 DT) to Valley (MP 55.77). The portion between Austin Junction (MP 56.64 DT) and from Valley (MP 55.77) is also used occasionally for commuter rail service, primarily as a means of laying over trains during special events.

Operations between Downtown (55.21 DT) and Fred (MP 55.38 DT) are yard limits while Centralized Traffic Control is in service from Fred (MP 55.38 DT) to Bill (MP 87.46) and from Austin Junction (MP 56.64) to Valley (MP 55.77). The Capital Metro rail network has 17 Control Points, most of which are single switch "end of siding" type locations.

The majority of the Capital Metro commuter rail alignment is single main track with passing tracks. Two main tracks are in service between Abbott and Robinson -- MT1 designated as the freight main track and MT2 designated as the commuter rail main track. In this section, MT2 includes a flyover over the UP; this flyover structure cannot support freight trains and is used only by the DMUs. MT1, used exclusively by freight trains between Abbott and Robinson, parallels MT2 at ground level and crosses UP's Austin Subdivision at grade.

Capital Metro's North Operations Maintenance Facility is the repair and storage facility for passenger commuter rail trains. The facility is operated under Yard Limits rules.

5.2 Austin Steam Train Association Passenger Excursion Operations

ASTA tourist excursion service is operated primarily on weekends throughout most of the year. The ASTA trains are operated by staff and volunteer crews. ASTA is a federally-recognized non-profit 501(c) 3 organization. The organization offers several different excursions using one diesel-powered train consist. The Hill Country Flyer operates between Cedar Park and Burnet, generally on Saturdays between 10:00 a.m. and 4:00 p.m. The Bertram Flyer generally runs on Sundays between 2:00 p.m. and 5:00 p.m. from Cedar Park to Bertram, as well as Summer Saturdays from 6:00 p.m. to 9:00 p.m. and on certain Summer Tuesdays, Wednesdays, and Thursdays from 10:00 a.m. to 1:00 p.m. Other special event trains are also operated, including occasional trips from Cedar Park to Downtown Austin on Sundays from 3:00 p.m. to 6:00 p.m. Appendix E provides the current ASTA schedule and Appendix N provides the current agreement.

The excursion services operate over the same trackage as the commuter and freight services. However, the small spur from Wilkie Wye to Burnet presently sees limited freight activity. Since ASTA operates FRA compliant equipment, temporal separation from the freight operations is not required.

For the purpose of freight operations planning, it shall be assumed that the growth of ASTA services will not exceed ten (10) percent during the life of this agreement. The Freight Services Contractor shall support this level of service without compensation for track

utilization, increased operating costs due to freight train dispatching delays or any other costs associated with ASTA train operation.

6 Other Subsidiary Users

Capital Metro also has an agreement with Railroad Partners, Inc., a Texas based 501(c) 3 non-profit corporation dedicated to the preservation and restoration of historic rail corridors, for the use of two out-of-service portions of its rail network (See Appendix O). Such use is limited to “motor cars (‘speeders’), gang cars, hand cars, velocipedes and pedal powered railroad equipment” and is provided at no cost in exchange for some basic rail corridor maintenance. This consists primarily of cutting back overhanging trees and keeping the corridor clear of major vegetation. The agreement, set to expire in 2015 with one one-year option to renew, allows use of out-of-service segments of the West Subdivision from MP 127.68 (Scobee) to MP 154.1 (Llano) and use of out-of-service segments of the East Subdivision from Butler (MP 23) to Giddings (MP -1.3).

Should the Freight Services Contractor wish to rehabilitate and restore freight service at its own expense to any of out-of-service track within the Capital Metro rail network used by Railroad Partners, the Freight Services Contractor shall provide written notice to Capital Metro. The Freight Services Contractor shall assume that up to twelve (12) months will be required to terminate the rights of Railroad Partners, Inc. or similar non-profit corporations before freight train operations can resume.

7 Rights of the Freight Services Contractor

The Freight Services Contractor shall be entitled to full and exclusive use of the Service Property for operation of freight rail only services, including the right to access and interchange traffic directly with all present and future railroads at McNeil, Elgin and Giddings interchanges, subject to the limitations in the Freight Services Contract for Commuter Rail passenger and ASTA excursion passenger services. The Freight Services Contractor shall not use the Service Property for passenger operation unless approved by Capital Metro.

The Freight Services Contractor shall not grant overhead rights, operating rights, trackage rights or any other rights on the Service Property, or portion thereof, without the advance written consent of Capital Metro.

8 Easements, Leases and Licenses

Capital Metro will retain and administer all current leases and licenses, except for those solely related to the operation of freight services for existing customers within the Service Property (which shall be administered by the Freight Services Contractor). Capital Metro may enter into new agreements for services and items unrelated to freight services applicable to the Service Property without the consent of the Freight Services Contractor. For any new agreements associated with freight services applicable to the Service Property, Capital Metro will work with the Freight Services Contractor to facilitate such new agreements. The Freight Services Contractor is encouraged to develop new agreements solely associated with freight services applicable to the Service Property, subject to Capital Metro participation in such development and final approval. Any rents, royalties, lease payments, retained real estate improvements and similar revenue derived from agreements related to the Service Property but unrelated to the direct movement of freight shall accrue solely to Capital Metro.

All new leases and licenses granted by Capital Metro, or expansion of existing leases and licenses by Capital Metro, shall be issued in a manner reasonably designed to minimize any interference with the Freight Services Contractor's use of the Service Property.

9 Term and Termination

The Freight Services Contractor shall initiate its mobilization efforts immediately upon receiving written Notice to Proceed (NTP) from Capital Metro.

The Freight Services Contractor shall have exclusive rights to operate, maintain, and manage the freight services within the Service Property, except as defined herein, beginning on the Commencement Date and terminating at the end of the base term.

The Authority has the sole option to exercise up to two (2) successive, contract extension options.

9.1 Option Terms

Approximately one year prior to the end of the base period or the end date of a previously exercised contract option term extension, the Authority will conduct a review of the Freight Services Contractor's performance to determine, based on such performance, if the Freight Services Contractor is eligible for the consideration of a contract option or successive contract option extension.

The Authority may determine the Freight Services Contractor to be eligible for a contract extension option if the Freight Services Contractor has satisfactorily met all of the following requirements:

- I. **Maintenance:** The Freight Services Contractor has maintained the Service Property, exclusive of the Commuter Rail Territory, in accordance with the standards of this agreement and the condition of the applicable portions of the Service Property, exclusive of the Commuter Rail Territory, meets or exceeds Day One conditions.
- II. **No Arrears:** The Freight Services Contract is not in arrears other than usual and customary payment terms, the Freight Services Contractor has demonstrated prompt payment practices, and has no undisputed liens due to non-payment.
- III. **Business Development:** The Freight Services Contractor has provided documentation that it has followed the Business Development Plan submitted in response to this Request for Proposal, along with any Capital Metro-approved amendments as defined in Section 11.6.2 and Section 11.6.3.
- IV. **Safety:** The Freight Services Contractor's safety performance satisfactorily meets the performance threshold established as outlined in Section 11.9.5 of this document and has consistently adhered to the Capital Metro-approved Safety and Security Program.

10 Division of Revenue and Charges

10.1 Tariffs, Rates and Revenues

So long as the Freight Services Contractor is not in default, the Freight Services Contractor shall have the exclusive right to adopt, negotiate and modify existing tariffs, rates and charges for the shipment of goods over the Service Property including revenue sharing agreements with connecting carriers. The Freight Services Contractor shall be solely responsible for collecting such revenue from its customers and for settlement of any revenue sharing with connecting carriers.

10.2 Base Percent of Gross Freight Revenues Fee

The Freight Services Contractor shall pay Capital Metro monthly a Base Percent of Gross Freight Revenues Fee. The percentage shall be specified in the Freight Services Contractor's proposal and incorporated into the Freight Services Contract.

10.3 Commuter Rail Territory Per-Car Fees

The Freight Services Contractor shall pay Capital Metro a Per-Car Fee on a monthly basis. See Exhibit A Schedule. The Commuter Rail Territory Per-Car Fees apply to all revenue and non-revenue car movements regardless of actual weight. The fee does not apply to locomotives or shoving platforms.

10.4 Commuter Rail Territory Freight Switch Maintenance Fee

The Freight Services Contractor shall pay Capital Metro Switch Fees on a monthly basis for the maintenance of freight-only turnouts in the Commuter Rail Territory. This Switch Fee applies only to turnouts used to service freight customers. See Exhibit A Schedule.

The current active freight-only switches in the Commuter Rail Territory are:

- Guthrie – MP 55.44
- ABC – MP 55.62
- Capital Beverage – MP 65.97
- Lake Creek – MP 73.73
- Foxworth – MP 80.22

10.5 Dispatch Fee

To compensate Capital Metro for dispatching services along the Service Property, the Freight Services Contractor shall pay Capital Metro a monthly Dispatch Fee. See Exhibit A Schedule.

10.6 Tax Credit

Ninety (90) percent of any federal, state or local tax credits or tax subsidies realized by the Freight Services Contractor for the operation and maintenance of the eligible freight service across the Service Property or performance of other obligations outlined in this Contract shall be provided to the Authority. The Freight Services Contractor shall retain ten (10) percent for administrative purposes.

The Freight Services Contractor shall pursue all eligible tax credits that are currently available or may be made available during the duration of the Freight Services Contract or any option extension.

10.7 Escalation

The Commuter Rail Territory Per-Car Fees, Switch Fee, and Dispatch Fee shall escalate annually based on the Association of American Railroads' Cost Index. Escalation shall be applied on first and each consecutive anniversary of the Commencement Date.

11 Contractor Requirements

11.1 Common Carrier Obligations

Subject to the terms and conditions of the Freight Services Contract, the Freight Services Contractor shall have the full right and responsibility to provide common carrier rail service on the Capital Metro service property and to use the Capital Metro service property for all purposes consistent with the duties, rights, obligations and responsibilities of a rail carrier under the jurisdiction of the STB, the FRA, and other governing bodies or laws. Such rights shall include, but shall not be limited to, all rights of a rail carrier under the Revised Interstate Commerce Act, 49 U.S.C 11101, et seq. and the ICC Termination Act (Public Law 104-88, 109 Stat. 803).

The Freight Services Contractor shall not suspend or discontinue its operation by rail over all or any part of the service property without the express written consent of the Authority, which shall not be unreasonably denied or delayed, before applying for and obtaining from the STB, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approval or exemptions from regulation for such discontinuance of operations.

11.2 Administration and Management

Except as otherwise noted in the Freight Services Contract, the Freight Services Contractor shall have the right to change, augment and revise its management and operations on and over the Service Property that in its judgment may be necessary, expedient and proper. The Freight Services Contractor shall be obligated to fulfill all current and existing responsibilities, obligations, and duties in managing all current and existing property leases and other similar agreements related to the Service Property. The Freight Services Contractor shall be responsible for the operating policies and scheduling of transportation over the Service Property and scheduling maintenance activities in accordance with the requirements of this Contract.

All Contractor operation, regulatory compliance, coordination, reporting, monitoring, capital improvement, maintenance and repair shall be provided at no cost to Capital Metro.

11.3 Standards and Practices

Included in Appendices to the Freight Services Contract, and provided as a guide for Freight Services Contractor performance under this Contract, are the following Authority standards:

- Configuration Management Plan – Appendix H
- Software Management Plan – Appendix I
- Rail Systems Crossing Design Criteria Manual – Appendix J
- Private Crossing Requirements – Appendix K
- Bridge Safety Management Plan – Appendix L

Industry standards and accepted railroad practices shall be used to further guide Contractor performance. These standards include, but shall not be limited to, those of the General Code of Operating Rules, the American Railroad Engineering and Maintenance of Way Association, the Association of American Railroads, and the Federal Railroad Administration.

11.4 Key Personnel

The Freight Services Contractor shall maintain the necessary personnel for the safe and adequate operation, maintenance and management of the freight services over the Service Property. The Key Personnel include the General Manager and his or her direct reports. All Key Personnel shall be subject to the approval of Capital Metro.

11.4.1 General Manager

The Freight Services Contractor shall appoint an individual to represent the Freight Services Contractor on all technical and contractual issues relating to the performance under the Freight Services Contract and who shall serve as the primary point of contact for the Authority. All written correspondence concerning the Freight Services Contract will be addressed to this individual or his/her designee. This person shall be the General Manager, shall be subject to the prior approval of Capital Metro, shall be assigned exclusively to this Contract and shall directly oversee personnel that manage the following functional areas: safety, operations, training, maintenance, business development and FRA Coordination. At anytime during the duration of the Freight Services Contract and any Freight Services Contract Options, the General Manager shall not be temporarily reassigned to other projects or properties without the express written approval of Capital Metro.

The General Manager shall have at least five (5) years of freight rail experience (within the last ten (10) years) as a senior operating officer in a comparable operating environment. The General Manager shall have at least three (3) years experience in senior management of a freight rail operating environment that includes coordinating shipments with or through Class I operations and/or managing freight operations with large volumes of freight traffic.

The General Manager shall be a resident of the Austin area and available twenty four (24) hours/day, seven (7) days a week. The General Manager shall be fully empowered to make all operating decisions on behalf of the Freight Services Contractor as necessary to maintain safe and efficient operations, and shall serve as the Freight Services Contractor's representative in all meetings with Capital Metro and/or its duly appointed representatives and designees.

Capital Metro will continuously monitor the effectiveness of the General Manager. Failure to continually demonstrate proficiency in performing his/her duties or adequately addressing previously identified deficiencies in connection with this Contract shall be grounds for a request for replacement by Capital Metro to the Freight Services Contractor.

The Freight Services Contractor shall immediately fill any vacancy or absence in the General Manager position on an acting basis.

A vacancy in the General Manager position shall be filled on a permanent basis by an individual approved in advance by Capital Metro.

11.4.2 Other Key Personnel

The Freight Services Contractor shall ensure and maintain adequate personnel with appropriate levels of authority and with a direct report to the General Manager overseeing the following functional responsibilities: safety, operations, maintenance and business development. Except where stated otherwise, multiple responsibilities may be performed by the same individual.

11.4.3 Change in Management

The Freight Services Contractor's management team stability is a critical element in successful performance under this Contract. To achieve that objective, the Freight Services Contractor shall not transfer the General Manager or any of his or her direct reports for a minimum of twelve (12) months from the Commencement Date, unless otherwise approved by Capital Metro.

Any change in the General Manager position or other Key Personnel positions that occurs within twelve (12) months of the Commencement Date shall require the Freight Services Contractor to pay the Authority Twenty Five Thousand Dollars (\$25,000) per position change in liquidated damages. The Authority may waive damages, at the sole discretion of the Authority, if the Freight Services Contractor provides a replacement acceptable to the Authority.

The Freight Services Contractor shall provide no less than ninety (90) day written notice of any proposed change in the General Manager [CDRL 14-02]. Liquidated damages of Twenty Five Thousand Dollars (\$25,000) shall be assessed if any personnel change is made to the General Manager position without written Authority approval and/or proper notice.

Capital Metro reserves the right at any time to direct the Freight Services Contractor to correct deficiencies in the performance of the General Manager and/or other Key Personnel. Capital Metro may issue the Freight Services Contractor a written Deficiency Notice identifying the deficiencies of the General Manager and/or other Key Personnel. The Freight Services Contractor shall have thirty (30) days from receipt of the written Deficiency Notice to respond with proposed corrective actions to resolve the identified deficiencies [CDRL 14-03].

Capital Metro reserves the right at any time to issue the Freight Services Contractor a Dismissal or Reassignment Notice requesting dismissal or reassignment of the General Manager and/or other Key Personnel. The Freight Services Contractor shall have two (2) days from receipt of the written Dismissal or Reassignment Notice to agree to such dismissal or reassignment request, or provide justification for further consideration. Capital Metro shall have the right to refuse any further consideration and require the Freight Services Contractor to execute the requested dismissal or reassignment.

11.4.4 Annual Organizational Profile and Chart

The Freight Services Contractor shall provide an updated Organizational Profile and Chart to the Authority on an annual basis, within sixty (60) days of NTP and sixty (60) days after each anniversary of the Commencement Date [CDRL 14-04]. This shall include a complete listing of all officers and other senior management of the Freight Services Contractor and a chart outlining the reporting structure and functional duties of the Freight Services Contractor's personnel performing services under this Contract. Key Personnel shall be noted addressing the reporting structure and functional areas as required in Section 11.4.2. The Organizational Profile and Chart shall also indicate the position, and identify the person, that will fulfill the General Manager's duties on an interim basis as a result of vacancy or absence of the General Manager.

11.5 Equipment and Facilities

The Freight Services Contractor shall, at its own expense, provide the appropriate equipment, personnel and facilities as necessary to operate, maintain and manage common carrier rail freight transportation services across the Service Property including, but not limited to, locomotives, rolling stock, maintenance equipment, office space, office equipment, fuel, and such other facilities and equipment as are necessary to provide the required services under this Contract.

The Freight Services Contractor may use the modular building located at Abbott Yard. The Freight Services Contractor shall be solely responsible for determining the adequacy of the facility for use by the Freight Services Contractor. The Freight Services Contractor shall not have use of the building at Abbott Yard until the Commencement Date.

11.6 Business Development and Marketing

Business development, business management and business retention along the Service Property are in the mutual interest of the Freight Services Contractor and Capital Metro. The Freight Services Contractor shall use its best efforts to promote the use of freight services consistent with the proposed Marketing Plan, shall maintain a high degree of satisfaction with existing customers and shall diligently seek new customers for freight services.

11.6.1 Marketing and Business Development Activities

The Freight Services Contractor shall directly employ the necessary personnel to manage the current customers and market opportunities for service expansion as outlined in the Freight Services Contractor's Marketing Plan submitted with the Freight Services Contractor's final proposal.

The Freight Services Contractor shall perform, at a minimum, the activities and functions described below:

- Frequent contact with current and prospective customers along the Service Property;
- Preparation and distribution of marketing pamphlets and materials;
- Preparation and distribution of periodic reports for use by Capital Metro and/or economic development agencies in the region concerning the Authority's and the Freight Services Contractor's activities along the Service Property [CDRL 14-05];
- Proactive support to economic development agencies, the jurisdictions along the Service Property, the State of Texas and the Authority in the recruitment of industry to the Authority's service area along the Service Property; and
- Other activities as necessary to promote increased rail traffic to and from the Service Property, and to support the Authority's mission of furthering economic development through the retention, improvement and expansion of rail infrastructure and rail service.

11.6.2 Business Development and Marketing Plan Initial Update

The Freight Services Contractor shall provide Capital Metro any updates to the Business Development and Marketing Plan submitted in its final proposal within 60 days after NTP for review and acceptance by Capital Metro [CDRL 14-06].

11.6.3 Marketing and Business Development Quarterly Report

The Freight Services Contractor shall provide Capital Metro with a Quarterly Marketing and Business Development Report on marketing and business development activities that occur within the reporting quarter [CDRL 14-07]. The first quarter report shall address the marketing and business development activities for October, November and December. The second quarter report shall address the marketing and business development activities for January, February, and March. The third quarter report shall address the marketing and business development activities for April, May and June. The fourth quarter report shall address the marketing and business development activities for July, August and September.

These updates shall be submitted with the appropriate Monthly Reports of the last month of reporting quarter. This report shall include, but not be limited to, the following information:

- Any actions addressed or carried forward from previous quarterly report;
- Contact by the Freight Services Contractor with current customers and any change in services provided to current customers;
- Contact by the Freight Services Contractor with prospective customers, any progress made towards provision of services, and/or anticipated interaction with prospective customer in the next quarter;
- Support provided by the Freight Services Contractor to Capital Metro or any economic development agencies to market the freight opportunities along the Service Property;
- Other relevant activities regarding business development and marketing during the quarter warranting the attention and knowledge of Capital Metro; and,
- Any challenges, corrective actions or follow up that will need to be addressed in the next quarter.

11.6.4 Business Development and Marketing Plan Annual Update and Annual Report

The Freight Services Contractor shall annually (within 60 days after each anniversary of the Commencement Date) provide Capital Metro with a written narrative describing the marketing and development efforts undertaken by the Freight Services Contractor in the previous year to advance business expansion and service delivery along the Service Property. This narrative shall also include any updates to the Freight Services Contractor's Marketing Plan to address new or developing needs along the Service Property. This written narrative shall be called the Business Development and Marketing Annual Report [CDRL 14-08].

11.7 Accounting Services

The Freight Services Contractor shall establish and perform all necessary accounting services appropriate to conducting business as a railroad and to comply with the Freight Services Contract. The Freight Services Contractor shall permit Capital Metro access to all documents related to the business operation of the Freight Services Contractor including, but not limited to, agreements, revenue divisions and records of rail traffic, receipts and expenditures.

11.8 Reporting

11.8.1 Monthly

The Freight Services Contractor shall provide monthly reports to Capital Metro for auditing and record keeping purposes. All monthly reports, exclusive of financial reports, shall be provided within ten (10) business days after the end of each calendar month. The Monthly Financial Report shall be provided to Capital Metro within three (3) business days after the end of each calendar month.

The monthly report(s) shall include:

- Monthly Financial Report, which provides an unaudited Statement of Revenues, Expenses, Taxes and Income and General Ledger Balance for the time period reported, shall include, but not be limited to, a list of the gross revenue and all fees to be paid to Capital Metro via the payment associated with the corresponding month (see Section 10) [CDRL 14-09];
- Monthly Operating Report [CDRL 14-10] which provides the following:
 - A summary of originating and terminating traffic by commodity and by principal line segment for the reporting period. This shall include a bill of lading for each car, dollar amount invoiced per carload, customer account name, waybill date and accessorial or extra service dollar amount invoiced;
 - A statistical summary of car and truck weights, as required in Section 11.11;
 - A statement of major traffic gains or losses;
 - A summary of operating and maintenance activities by subdivision;
 - A summary of operational or maintenance issues warranting the knowledge and attention of Capital Metro;
 - A statement detailing any customers in arrears;
 - A summary of any inspection activity by the FRA or any other regulatory or governmental entity and results of such inspection as required in Exhibit E.
- Listing of any Contractor and/or Capital Metro claims, damages, liquidated damages, or any other costs/payments associated with the Freight Services Contract [CDRL 14-11];
- An overview and explanation of any FRA reportable incidents that occurred or defects noted for the time period reported and any corrective action taken [CDRL 14-12].

11.8.2 Quarterly

The Freight Services Contractor shall provide a Marketing and Business Development Quarterly Report [CDRL 14-07] as described in Section 11.6.3.

11.8.3 Annual Submissions

All annual submissions required under this Contract are due to Capital Metro within sixty (60) days after each anniversary of the Commencement Date of the Freight Services Contract, unless otherwise agreed by Capital Metro.

11.8.3.1 Annual Report

The Freight Services Contractor shall prepare an Annual Report [CDRL 14-13] specific to the freight services provided under this Contract. This report shall provide an overview of the Freight Services Contractor's performance during the previous year. This report shall include, at a minimum:

- Annual audited financial statements or comparable annual report;
- Proforma profit and loss statements for freight operations taking place on the Service Property;
- The number of revenue producing carloads by customer, commodity, origin and destination;
- Annual gross ton/miles broken down by line segments;
- Compilation of all FRA reports submitted during the year including, but not limited to, FRA reports on track, equipment or operation issues and any evidence of corrective action taken regarding the issues;
- Overview of infrastructure investments and maintenance activities;
- Listing, status and resolution of any Contractor and/or Capital Metro claims, damages, liquidated damages, or any other costs/payments associated with the Freight Services Contract;
- Safety and security performance metrics as required in Section 11.9.5;
- Any updates to the Rail Crossing Inventory Database as required in Section 11.14.2;
- Any inspection reports conducted by a third party; and
- Any occurrences having a significant impact on the condition of the Service Property.

11.8.3.2 *Other Annual Submissions*

As an appendix to the Annual Report, or under separate cover, the Freight Services Contractor shall provide:

- Annual Bridge Inspection Report (see Section 11.14.5) [CDRL 14-14];
- Annual Review of Track Investments (see Section 11.14.4) [CDRL 14-15];
- Annual Maintenance Program (see Section 11.14.8) [CDRL 14-16];
- Business Development and Marketing Annual Report (see Section 11.6.4) [CDRL 14-08];
- Annual Organization Profile and Chart (see Section 11.4.4) [CDRL 14-04];
- Annual Proposed Timetable (see Section 11.9.6) [CDRL 14-17]; and
- Updated Safety and Security Program (see Section 11.9.5) [CDRL 14-18].

11.8.4 *Situational Reporting*

The Freight Services Contractor shall provide timely reporting to dispatch and to Capital Metro as periodically defined under the terms of this Contract or as extraordinary and unusual events and situations warrant the knowledge and/or involvement of Capital Metro, dispatch, and /or the Commuter Rail Contractor Operator.

The Freight Services Contractor shall provide immediate notice to the Authority of damage or injury to persons or property occurring within the Service Property or other properties used by the Freight Services Contractor to provide the freight services under this Contract. The Freight Services Contractor shall, within three (3) days of receiving notice of any such incident, furnish a written report [CDRL 14-19] to the Authority including a brief statement of the facts and an estimate by the Freight Services Contractor as to the approximate potential claim that may arise and/or corrective action taken. If a notice or claim of damage or injury is made to the Freight Services Contractor, then the Freight Services Contractor shall promptly furnish the Authority with a copy of such notice or claim [CDRL 14-20]. Thereafter, the

Freight Services Contractor shall provide the Authority with any updates or further records associated with the claim.

The Freight Services Contractor shall provide Capital Metro immediate notice when any inspector from the FRA or any other regulatory or governmental entity is on property as required.. Any verbal notice shall be immediately followed by a written notice [CDRL 14-21]. Any results or reports from such inspection shall be provided in the Monthly Operating Report [CDRL 14-10] as specified in Section 11.8.1.

11.8.5 Track Charts

11.8.5.1 Capital Metro Initiated Track Chart Updates

The Freight Services Contractor shall support Capital Metro with EIC protection in accordance with Section 11.20 as necessary to create Capital Metro initiated updates to existing track charts depicting the alignment and maintenance history of the Service Property.

11.8.5.2 Contractor Track Chart Updates

If the Freight Services Contractor initiates updates to any track charts, Capital Metro shall be provided an electronic copy of the updated track charts at no cost to Capital Metro.

11.8.6 Document Control

The Freight Services Contractor shall maintain full and complete records of freight services provided along the Service Property so that the information is up-to-date and readily accessible upon request by the Authority. Maintenance records shall include, but not limited to, updated track profiles and track charts.

11.8.7 Asset Management System

The Freight Services Contractor shall use the Asset Management System provided by Capital Metro and shall retain all necessary records to document the work, track resource utilization, manage track and structure materials, schedule work and forecast requirements.

In addition to any requirements of this Contract, the Contractor shall be required to utilize Capital Metro's Asset Management System to effectively record and manage track, bridges, signals and communications equipment activities. Capital Metro will provide the software to enable full functionality. Capital Metro will provide train-the-trainer type training to the Freight Services Contractor on the use of the system. The Freight Services Contractor shall be responsible for ensuring all appropriate personnel are using the system correctly and ensuring data integrity.

The Freight Services Contractor shall be required to enter, at a minimum, work orders, inspections, service calls, and labor hours and use the system to manage and record usage of maintenance materials required for the performance of the maintenance of signals and communications, track, bridges, and other structures and systems required in this Contract.

11.9 Operations

The Freight Services Contractor shall operate freight service in accordance with all federal, state, local and Authority requirements and as necessary and appropriate to provide common carrier rail freight transportation service across the Service Property as defined in the Freight Services Contract. The Freight Services Contractor shall obtain all governmental

approvals, authorizations, franchises, licenses and permits as may be requested or required for the rendering of such service.

The Freight Services Contractor shall observe and comply with any and all requirements of all constituted public authorities, including, but not limited to, any inspections of the Freight Services Contractor's equipment or facilities, and will follow and comply with all federal, state and local statutes, ordinances, regulations and standards applicable to the Freight Services Contractor and its use of the Service Property.

11.9.1 Operating Rules

The Freight Services Contractor shall perform its operations in accordance with the General Code of Operating Rules, Capital Metro Timetable Special Instructions, including Capital Metro Signal Indications, the requirements of the Freight Services Contract and all reasonable and customary operating practices of freight railroads. Appendix D contains the current Capital Metro Timetable and System Special Instructions.

Should Capital Metro elect to alter the operating rules under which the Service Property is governed, it shall provide the Freight Services Contractor reasonable notice detailing the revised operating rules. If the operating rule revisions required by Capital Metro impact the qualifications of the Freight Services Contract personnel and Capital Metro personnel, the Freight Services Contractor may request a reasonable period for transition and training to address the revised operating rules and provide for the appropriate training and qualifications of personnel. The Freight Services Contractor shall implement a training and examination program, subject to advance review and approval by Capital Metro, as defined in Section 11.9.7, to requalify its operating personnel and any Capital Metro personnel at no cost to Capital Metro.

11.9.2 Level of Service Requirements

The Freight Services Contractor shall operate freight services on the Service Property, as defined in the Freight Services Contract and at its own expense, at such levels and at such frequency as reasonably acceptable to the Authority and to the customers along the Service Property. The Freight Services Contractor shall coordinate the level of freight service provided within and through the Commuter Rail Territory as necessary with the Commuter Rail Operator Contractor.

The Freight Services Contractor shall be required to remove all wrecks and derailments within the Service Property, exclusive of the Commuter Rail Territory, within two (2) days following any such occurrence, restoration of the derailment site to safe operating condition within three (3) days following such occurrence, and restoration of a derailment site to its original condition or better within thirty (30) days following the occurrence, unless the Authority otherwise agrees in writing to extend such deadlines for good cause shown by the Freight Services Contractor.

The Freight Services Contractor shall be responsible for removing all wrecks and derailments from the Commuter Rail Territory within twenty-four (24) hours. If the derailment is deemed the fault of the Freight Services Contractor as outlined in Exhibit E, Section 7 then the Freight Services Contractor shall compensate the Authority for actual damages caused including, but not limited to, costs associated with restoration of the track, restitution of commuter rail services, provision of substitute services and lost revenue. If the Freight Services Contractor does not expeditiously remove the wreck or derailment within the

required timeframe, the Freight Services Contractor agrees to pay Five Thousand Dollars (\$5,000) per day liquidated damages in addition to actual damages.

The Freight Services Contractor shall maintain, repair and replace the Service Property, exclusive of the Commuter Rail Territory, to support the appropriate levels of service, to maintain maximum authorized speed to the extent possible, and to minimize the need for and duration of temporary slow orders and temporary speed restrictions.

11.9.3 Four-Axle Car

The Freight Services Contractor shall use four-axle cars. If the Freight Services Contractor needs to operate with anything other than four-axle cars, the Freight Services Contractor shall provide written request to Capital Metro detailing the number of axles needed to operate, the section of the Service Property being used for the movement, the duration and frequency of the moves, and the explanation of need. Capital Metro will not unreasonably withhold approval [CDRL 14-22].

11.9.4 Nondiscrimination

The Freight Services Contractor shall not discriminate unreasonably with respect to rates, transportation, and services against any shipper and shall provide transportation or service on reasonable request.

11.9.5 Safety and Security

The Freight Services Contractor shall operate freight services over the Service Property, maintain any and all Contractor owned or leased equipment or facilities, and maintain the applicable portions of the Service Property, as defined in the Freight Services Contract, in a manner that is safe and secures and protects the Service Property. All FRA safety defects shall be resolved within fifteen (15) days unless a written extension is agreed upon by Capital Metro.

Capital Metro will monitor Contractor safety performance regularly through audits and reviews of FRA required submissions and dispatch reports. Corrective actions outlined in monthly reports must be adequately and expeditiously resolved.

Capital Metro shall base safety performance and compliance on the following metrics:

- Deaths and Non-Fatal Injuries Per Employee Per Two Thousand Person Hours Worked; and
- Total Train Accidents Per Million Train Miles Operated.

The Freight Services Contractor shall report these metrics every year with the Annual Report (see Section 11.8.3.1). Capital Metro will deem the Freight Services Contractor in compliance if the Freight Services Contractor's two-year average rate for the above categories is lower than the average of comparable industry peers based on train miles operated and employee hours worked for the time period being examined. The FRA will be the primary source to retrieve the peer system data. Injuries or accidents that were induced by a third party, as determined by Capital Metro, will be removed from the calculation.

In the event, the Freight Services Contractor is found deficient in the above categories or Capital Metro identifies a safety or security concern through an audit or review of records, the Freight Services Contractor shall provide a corrective action plan [CRDL 14-23] within

five (5) days of notification of safety concern by Capital Metro unless Capital Metro deems that more expedient action is required.

The Freight Services Contractor shall develop and maintain throughout the duration of this Contract, including all Contract extension terms, a Capital Metro approved Safety and Security Program [CRDL 14-18] which includes the development of a Safety and Security Plan. An initial Safety and Security Plan and Program is due to Capital Metro sixty (60) days after NTP. An updated program shall be submitted to Capital Metro for review and approval annually as part of the Annual report.

The Safety and Security Plan shall include Roadway Worker Safety and all other FRA mandatory training based on application of appropriate local, state and federal regulations, ordinances, standards and guidelines and outline methods to identify, eliminate, minimize and control safety hazards and risks. The Plan shall provide for, without limitation, an identification system for employees and subcontractors and a plan for restricting access to the Service Property by unauthorized individuals. The Plan shall also detail coordination process with Capital Metro Security Personnel and local law enforcement. The plan shall meet all applicable federal and other legal requirements and regulations, and shall be provided to Capital Metro for review and approval annually as part of the Annual report. The Safety and Security Plan shall also include the Freight Services Contractor's program to monitor the Service Property, exclusive of the Commuter Rail Territory, from vandalism, terrorism, and other threats. This plan shall require reporting of any threat or potential threat to Capital Metro Chief of Police immediately.

11.9.6 Timetable Submission

The Freight Services Contractor shall submit annually, as part of the Annual Report, a proposed timetable for freight service operations on the Service Property to the Authority for review and approval [CDRL 14-17]. Any changes to the proposed timetable during the year shall be submitted to the Authority in writing at least 60 days in advance [CRDL 14-24].

11.9.7 Training and Physical Characteristics Qualification

All Contractor employees providing services under this Contract shall possess the qualifications, education, training, experience and certifications necessary to perform such services in the manner required under this Contract. Training and qualifications shall be kept up-to-date based on changes in the operating and regulatory environment.

The Freight Services Contractor shall implement a training and examination program [CDRL 14-25], subject to advance review and approval by Capital Metro, to qualify the Freight Services Contractor's operating personnel and Capital Metro's rail and security personnel at no cost to Capital Metro. Up to four (4) classes shall be held annually as necessary to qualify Capital Metro personnel and Contractor personnel. The Freight Services Contractor may cancel a class if mutually agreed by Capital Metro that such qualification class is not necessary at that time. The program shall be based on the General Code of Operating Rules and shall be modified as necessary relative to changes in industry requirements, Capital Metro requirements or operating conditions on the Service Property. The program shall be submitted to Capital Metro for review and acceptance sixty (60) days after NTP. Any subsequent revisions must be submitted for review and approval at least sixty (60) days prior to implementation of changes.

11.9.8 Dispatching

Capital Metro shall provide dispatching services to the Freight Services Contractor in support of this Contract through its Commuter Rail Operator Contractor, and shall have sole control of the dispatch of all freight and passenger trains throughout the Service Property. Capital Metro, through its Commuter Rail Operator Contractor, shall perform all dispatching, shall order and direct the movement of all freight trains, railroad freight cars, locomotives, equipment and rolling stock using the Service Property, and shall monitor Capital Metro's Emergency Notification System as defined in 49 CFR Part 234. Dispatching shall be provided on a 24-hour per day, seven (7) day per week basis (subject to events of force majeure). Such dispatching will be timely performed and in a manner resulting in the most efficient movement of all trains in accordance with generally accepted train dispatching principles.

The Commuter Rail Operator Contractor shall be responsible for providing the Freight Services Contractor with all appropriate bulletins, work orders and notifications of activities occurring within the Service Property, inclusive of the Commuter Rail Territory, which warrant the knowledge of the Freight Services Contractor or might impact Contractor performance under the requirements of this Contract.

All passenger commuter rail service and excursion passenger service shall have reasonable priority over all freight service. Capital Metro and its Commuter Rail Operator Contractor shall not materially adversely affect the Freight Services Contractor's performance of its common carrier obligation. The Freight Services Contractor shall notify Capital Metro immediately if the Freight Services Contractor believes the delivery of freight services along the Service Property is being adversely impacted by passenger rail prioritization. Capital Metro may request that the Freight Services Contractor detail or quantify this impact for inclusion in a subsequent Monthly Operating Report.

The Freight Services Contractor shall provide the Commuter Rail Operator Contractor and Capital Metro with a contact phone number that will be answered on a 24-hour per day, seven (7) day per week basis by personnel that shall be capable of expeditiously responding to dispatcher requests. Requests may include, but are not limited to, crossing malfunctions, safety or security concerns, operational issues or maintenance requests.

11.9.9 Capital Metro or Third Party Hi-Rail Trips

Capital Metro reserves the right to conduct unescorted hi-rail trips of the Service Property with Capital Metro personnel qualified under the provisions of Section 11.9.7. Capital Metro will closely coordinate with the Freight Services Contractor and dispatch through the Commuter Rail Contractor Operator to minimize impact, if any, to the services provided under this Contract. Capital Metro may utilize its own hi-rail vehicles or may coordinate hi-rail access through a third-party.

11.9.10 Employee In Charge within Commuter Rail Territory

The Freight Services Contractor shall have up to two (2) employees qualified by the Commuter Rail Contractor Operator so that the Freight Services Contractor can provide its own EIC protection, when necessary, within the Commuter Rail Territory. The Commuter Rail Contractor Operator shall not charge the Freight Services Contractor for the annual qualification of up to two (2) employees.

No work shall be performed in the Commuter Rail Territory by the Freight Services Contractor without coordination with and receiving approval from the Commuter Rail Operator Contractor. This includes activities within Abbott and Robinson Yards and at McNeil Junction that would require protection.

11.10 Positive Train Control

Capital Metro is responsible for implementing Positive Train Control in the Commuter Rail Corridor and continues to work with its other contractors to revise the Authority's Positive Train Control Implementation Plan (PTCIP) and implement and design the program. Once completed, Capital Metro will provide its revised PTCIP to the Freight Services Contractor to provide a better and more detailed understanding of the PTC requirements.

Ultimately, the Freight Services Contractor shall be responsible for ensuring that its locomotives and trains can operate within and over all portions of the Service Property that include PTC in a manner that is compatible with Capital Metro's E-ATC wayside implementation. The Freight Services Contractor shall coordinate as necessary with the Commuter Rail Operator Contractor and the Authority's PTC Contractor during PTC implementation and testing.

The Freight Services Contractor shall submit to Capital Metro, for review and approval, its PTC Compliance Plan [CDRL 14-26] within ninety (90) days of receipt of the Authority's revised PTCIP. The PTC Compliance Plan shall include, but not be limited to, the Freight Services Contractor's approach to PTC compliance and the means and methods used to operate off-line locomotive traffic from an I-ETMS territory to an E-ATC territory. This Plan shall also quantify the financial, capital and operational impacts of PTC implementation. Capital Metro and the Freight Services Contractor will negotiate in good-faith any change to the Contract that may be required to successfully implement PTC

The Freight Services Contractor shall be solely responsible for equipping all future equipment following PTC implementation. The Freight Services Contractor shall provide Capital Metro with locomotive PTC equipment acceptance test reports [CDRL 14-27] at least seven (7) days prior to operation of a newly-equipped locomotive on PTC-equipped portions of the Service Property. Operation of specific locomotives with newly-equipped PTC installations shall be subject to review and approval of Capital Metro. Upon request by Capital Metro, the Freight Services Contractor shall arrange for a field test within PTC equipped portions of the Service Property of any newly-equipped locomotive during hours when passenger trains are not operating. The Freight Services Contractor shall make available the locomotive, operating personnel and test equipment (as applicable) for PTC testing without charge to Capital Metro.

11.11 Bertram Scale

A weigh-in-motion scale is in service at Bertram on the West Subdivision (MP 104.3). The scale is interfaced with a computer and communications equipment to record and transmit both per-truck and per-car weights. The recorded data is correlated to specific car numbers using an AAR-compliant Automatic Equipment Identification (AEI) tag reader. The Freight Services Contractor shall have the following obligations with respect to the Bertram Scale and in accordance with Capital Metro's Rail Operations Scale Policy as provided in Appendix X:

- The scale shall be traversed at a speed of 4 MPH or less in order to produce accurate readings and not damage the scale.
- Maintain the scale so that it has ninety-eight (98) percent or greater availability during the time periods when loaded aggregates trains are passing Bertram;
- Provide for periodic scale calibration and provide documentation of successful calibration to Capital Metro within six (6) months of the Commencement Date and at annual intervals thereafter [CDRL 14-28];
- Operate at least ten (10) percent of loaded cars passing Bertram through the weigh-in-motion scale at a speed that provides reliable weight data;
- Provide the car weight data to Capital Metro using existing communications systems;
- Within sixty (60) days after the Commencement Date, develop and submit for Capital Metro review and approval, operating procedures for setting out cars that are overloaded (in excess of 286,000 pounds or the governing weight limit of the West Subdivision, if modified) or that have a load that is not properly distributed (defined as one truck having a load exceeding 52.5% of the applicable car load limit) [CDRL 14-29];
- Provide a monthly statistical summary of car and truck weights, as measured by the Bertram Scale, to Capital Metro in the Monthly Operating Report (See Section 11.8.1) [CDRL 14-10]; and
- If, for a given monthly reporting period, more than two (2) percent of the weighed cars are found to be overloaded or have loads not properly distributed (as defined above), develop and submit for Capital Metro review and approval a plan that identifies specific measures to ensure that all cars are loaded to no more than 143,000 gross pounds per truck and 286,000 gross pounds per car [CDRL 14-30].

11.12 Wide Load Detectors

Excess dimension (“wide”) detectors are presently in service on Main Track 1 at McNeil (MP 71.70), County Road 200 (MP 95.31) and Decker Lane (MP 46.24). The Freight Services Contractor shall comply with Capital Metro operating requirements with respect to the disposition of any cars or locomotives that activate the detector. The contractor shall perform inspections and maintenance of defect detectors with the limits of the service property in accordance with all applicable regulations, and recommended practices established by federal, state and local bodies including but not limited to FRA, APTA, AREMA, MUTCD, TxMUTCD, OEM suppliers and sub-suppliers as a part of the maintenance services.

Capital Metro reserves the right to implement additional excess dimension detectors, at its sole expense, in or along the Service Property, near the limits of the Commuter Rail Territory. The Freight Services Contractor shall cooperate with Capital Metro to implement operating requirements with respect to the disposition of any cars or locomotives that activate the detector. The Freight Services Contractor shall make no claim against Capital Metro for increased operating costs or lost opportunities associated with the installation and monitoring of additional excess dimension detectors. The Freight Services Contractor shall provide EIC protection during the installation and testing of any additional high and wide detector within the Service Property as defined in Section 11.20.

11.13 Cooperation with Future Capital Metro Wheel Impact Load Detector(s) Installation

There are presently no Wheel Impact Load Detectors (WILDs) in service or planned within the Service Property. Such detectors are used on other commuter rail properties where freight trains commonly enter Commuter Rail Territory. Such detectors, normally paired with "hot box" and dragging equipment detectors, are designed to identify freight cars whose operation may damage the Commuter Rail Territory track structure.

Capital Metro reserves the right to implement one or more WILDs, at its sole expense, within the Service Property, near the limits of the Commuter Rail Territory. The Freight Services Contractor shall cooperate with Capital Metro to implement operating requirements with respect to the disposition of any cars or locomotives that activate the detector(s). The Freight Services Contractor shall make no claim against Capital Metro for increased operating costs or lost opportunities associated with the implementation of WILDs. The Freight Services Contractor shall provide EIC protection during the installation and testing of any WILD within the Service Property as defined in Section 11.20.

11.14 Maintenance

The Freight Services Contractor shall have the right and responsibility to maintain, inspect, repair and renew the Service Property, exclusive of the Commuter Rail Territory, and shall be allowed to perform normal and routine maintenance, inspections and repairs without prior approval of Capital Metro.

Maintenance, inspections and repairs shall include, but is not limited to, tie replacement, surfacing, aligning, bolt tightening, replacement of rail, rail switches, rail lubricators, defect detectors and rail hardware, replacement of grade crossing warning systems and associated circuitry, turning worn rail, replacing or augmenting ballast, maintaining proper drainage, normal bridge maintenance, and other normal railroad maintenance activities.

All activities shall be in accordance with industry best practices and standards, Capital Metro standards, FRA rules and regulations and all applicable local, state and federal laws.

11.14.1 *Contractor Responsibility*

Unless stated otherwise in the Freight Services Contract, the Freight Services Contractor shall be responsible to inspect, maintain, repair and replace the track, supporting infrastructure including bridges, grade crossings, and grade crossing warning systems, and right-of-way within the Service Property, exclusive of the Commuter Rail Territory, in a condition that is consistent with or better than that documented in the Day One condition assessment. The Freight Services Contractor shall not permit track conditions to deteriorate below the conditions which were documented in the Day One condition assessment or deteriorate in a manner that negatively impacts the levels of service required in Section 11.9.2.

In cases where track conditions are better than the minimum requirements of the FRA Track Class associated with the speeds operated, the Freight Services Contractor shall maintain the better track conditions as documented in the Day One condition assessment.

Upon termination of the Freight Services Contract or Contract option extension, the Freight Services Contractor shall return the track and right-of-way to Capital Metro in at least the same condition as was documented in the Day One condition assessment.

11.14.2 *Grade Crossings*

The Freight Services Contractor shall be solely responsible for the inspection, maintenance, repair and replacement of track, crossing surfaces, panels, tubs, ties and all other elements and associated infrastructure of all railroad highway grade crossings, including public and private crossings, within the Service Property, exclusive of the Commuter Rail Territory. The inspection, maintenance and replacement of these shall be in accordance with all federal, state and local guidelines including Capital Metro's Rail Systems Highway-Rail Grade Crossing Recommended Design Practices and Standards Criteria Manual provided as Appendix J, the private crossing design requirements in Appendix K, and the requirements of 49 CFR Part 234 and 236.

The Freight Services Contractor shall maintain a crossing inventory database in an Excel file of all crossings in the Service Property, exclusive of the Commuter Rail Territory, in a manner consistent with the National Highway-Rail Crossing requirements in 49 CFR Part 234. The Freight Services Contractor shall update the file as necessary and include such updates in its Annual Report as required in Section 11.8.3.1. The Freight Services Contractor shall make the excel database available to Capital Metro upon request. Capital Metro will submit required updates to the Federal Railroad Administration.

The Freight Services Contractor's responsibilities shall include the roadway approaches of private crossings within the Service Property limits, exclusive of the Commuter Rail Territory, leading up to the crossings from property line to property line. These private crossings and roadway approaches shall be inspected, maintained, repaired and replaced in accordance with the standards provided in Appendix K. The surfaces of the approaches shall be either asphalt or concrete, and any repairs or replacement shall be replaced in a like manner.

The Freight Services Contractor shall routinely inspect all rail-highway crossing surfaces and roadway approaches within the Service Property, exclusive of the Commuter Rail Territory, as part of its track inspection activities and update the crossing inventory database as required in 49 CFR Part 234. In cases where partial or complete responsibility for maintenance of rail-highway surfaces rests upon state or local highway departments, the Freight Services Contractor shall work cooperatively with the relevant agencies to achieve the necessary repairs in accordance with the terms of the agreements applying to each rail-highway crossing.

The Freight Services Contractor shall not be liable for the cost of installing any new rail-highway crossing or utility crossing granted by Capital Metro over, under, or across the Service Property, or any improvement, modification or alteration thereof. Once installed, the Freight Services Contractor shall be responsible for documenting the Day One condition and subsequent activities including inspection, maintenance, repair and replacement of any new crossing.

11.14.3 *Grade Crossing Warning Systems*

11.14.3.1 *Maintenance, Inspection and Repair Requirements and Materials*

The Freight Services Contractor shall be solely responsible for performing the inspection, maintenance, repair and replacement of all grade crossing warning systems within the Service Property, exclusive of the Commuter Rail Territory, in accordance with FRA requirements, Capital Metro's Rail Systems Highway-Rail Grade Crossing Recommended Design Practices and Standards Criteria Manual provided as Appendix J and local and state regulations.

The Freight Services Contractor shall perform inspections and maintenance of crossing warning systems with the limits of the Service Property, exclusive of the Commuter Rail Territory, in accordance with all applicable regulations, and recommended practices established by federal, state and local bodies including but not limited to FRA, APTA, AREMA, MUTCD, TxMUTCD, OEM suppliers and sub-suppliers as a part of the maintenance services.

The Freight Services Contractor shall maintain automatic grade crossing warning signals to be activated by trains approaching on main tracks and applicable industry and/or siding tracks in accordance with MUTCD, TxMUTCD, AREMA, FRA, State, and Capital Metro standards and recommended practices which accommodate the existing maximum authorized train speeds and provide crossing approach distances of sufficient length to accommodate the maximum authorized track speeds.

The Freight Services Contractor shall post emergency contact information and required signage at each rail-highway crossing and be available to repair malfunctioning grade crossing warning systems on a "24/7" basis. The Freight Services Contractor shall ensure that broken crossing gates are repaired as soon as possible upon notification.

Material for maintenance shall meet and/or exceed AREMA recommended practices. Any deviation from these standards shall be approved by Capital Metro in advance through the Capital Metro Configuration Management Committee.

Emergency repairs that require temporary modifications may be performed in the interest of safety. Verbal notification of such modification shall be made within four (4) hours of initiation of such modification. Request for permanent modifications shall follow in writing within twenty-four (24) hours of such initiation [CDRL 14-31]. Request shall include a detailed explanation of the required modifications and the reason it was initiated.

11.14.3.2 Plans and Procedures

The Freight Services Contractor shall provide the following plans and procedures which are specific to Capital Metro's signal system ninety (90) days after notice to proceed:

- Signal System Maintenance Plan [CDRL 14-32]
- Signal System Maintenance Procedures [CDRL 14-33]
- Signal System Inspection and Test Plan [CDRL 14-34]
- Signal System Inspection and Test Procedures [CDRL 14-35]
- Signal System Inspection and Test Data Sheets [CDRL 14-36]
- Signal System Failure Reduction Plan [CDRL 14-37]

All Test data shall also be incorporated into the Asset Management System.

11.14.3.3 Post Accident – Inspections and Tests.

Inspections and tests for proper operations after a reported accident must be recorded by the Freight Services Contractor. The Freight Services Contractor shall test the crossings without altering any aspects of the crossing.

The crossing sheet and post-accident forms shall be forwarded to the appropriate agency and Capital Metro personnel, showing accident inspection and any exceptions [CDRL 14-38].

The Freight Services Contractor shall jointly review with Capital Metro, the Post Accident – Inspections and Tests on an annual basis to ensure that equipment configuration or other items have not been altered.

11.14.3.4 *Filing of Inspection Forms*

The Freight Services Contractor shall file all necessary forms in a timely manner so as to comply with all FRA, rules standards and instructions.

The Freight Services Contractor shall develop the necessary forms for use by signal maintainers and submit to Capital Metro for review and approval. The Freight Services Contractor shall retain copies of all forms and test results as a record of completion and compliance. The test forms shall allow for the recording of actual test instrument readings.

The Freight Services Contractor shall inspect and verify that any modifications or changes to any part of the Capital Metro signal system by the Freight Services Contractor, Capital Metro contractors, or other contractors have been performed in accordance with approved test procedures. The test procedures shall be established by the Freight Services Contractor in accordance with AREMA, FRA and industry regulations.

The Freight Services Contractor shall submit, prior to beginning any work, plans showing proposed changes to the Capital Metro signal and communications systems for review as well as a complete schedule of work and testing [CDRL 14-31]. The test procedures shall be submitted indicating the proposed testing to be performed each time the signal system is returned to operation prior to movement of any trains [CDRL 14-35].

11.14.3.5 *Signal System Plans*

The Freight Services Contractor shall maintain Capital Metro's Signal Plans for the Service Property, exclusive of the Commuter Rail Territory. The Freight Services Contractor shall ensure proper revision levels are in order for the signal plans.

The Freight Services Contractor shall ensure signal drawings located in the field match all signal drawings in the repository and shall notify Capital Metro of any discrepancies [CDRL 14-39].

All electronic equipment requiring field programming in electronic format shall be documented for each device by location. This includes completely documented software and firmware. This information shall be retained for all vital logic control equipment, coded track equipment, data recorders, communication equipment and any other device with electronic storage of user entered programming.

The Freight Services Contractor shall backup electronic files of the signals and communication systems, and As-Build drawings every six (6) months and store as required by the Capital Metro Software Management Plan provided as Appendix Y.

11.14.4 *Track*

The Freight Services Contractor shall diligently maintain all in-service freight-only track and right-of-way, within the Service Property, exclusive of the Commuter Rail Territory, on a routine basis and shall provide a detailed report of such activities annually. Track shall be inspected and maintained in accordance with FRA requirements. Track shall be maintained to preserve existing track conditions and FRA class as documented in the Day One condition assessment. This work shall be performed in conformance with accepted railroad

industry practice and Capital Metro standards and shall include, but not be limited to, the following activities:

- Track inspection;
- Replacement of worn or broken rails, joint bars, switch points, frogs, and associated OTM;
- Tie and timber replacement;
- Ballast replacement and tamping;
- Crossing panels, tubs, ties and all other associated infrastructure
- Maintenance of track gauge, alignment, surface and all other parameters as required;
- Switch maintenance, welding, adjustment, etc.; and
- Maintenance and renewal of insulated rail joints.

11.14.5 *Bridges*

The Freight Services Contractor shall inspect, maintain and repair all bridges within the Service Property, exclusive of the Commuter Rail Territory, in accordance with FRA requirements and accepted industry practice. The Freight Services Contractor shall utilize the services of a professional railroad bridge engineer to perform periodic inspections and evaluate the load-carrying capacity of the structures as necessary. The Freight Services Contractor shall be responsible for inspections and reporting, via the Annual Report [CDRL 14-13] and the Asset Management System, in compliance with Capital Metro's Bridge Management Plan. The Freight Services Contractor shall provide Capital Metro and the Federal Railroad Administration with the appropriate updates to the Bridge Management Plan. See Appendix L for the Capital Metro Bridge Management Plan.

11.14.6 *Right-of-Way*

The Freight Services Contractor shall routinely inspect, maintain the integrity of, and perform overall housekeeping of the Service Property, exclusive of the Commuter Rail Territory, in accordance with accepted railroad industry practice and as required through the Freight Services Contract. The Freight Services Contractor shall control vegetation to maintain sight lines, facilitate drainage and provide a safe operating environment.

11.14.6.1 *Ditches and Culverts*

The Freight Services Contractor shall clean, inspect, maintain, and repair trackside ditches, culverts and like structures to maintain their drainage capabilities and keep free and clear of vegetation.

11.14.6.2 *Fencing*

The Freight Services Contractor shall maintain existing fencing throughout the Service Property, exclusive of the Commuter Rail Territory, including but not limited to the fencing at the Abbott Yard and the Manor and Burnet storage yards. Fencing shall be maintained, repaired and replaced throughout the duration of the Freight Services Contract, including any contract option extensions, in a manner that prevents intrusion and adequately protects and secures the Service Property and the Freight Services Contractor and Authority owned equipment.

11.14.6.3 *Vegetation*

The Freight Services Contractor shall be responsible for the eradication, control and removal of vegetation as required below, as required by applicable state law or local

ordinance, and as required to ensure safe operations and maintain the integrity of the Service Property, exclusive of the Commuter Rail Territory.

The Freight Services Contractor shall comply with all federal, state, and local laws, ordinances and regulations relating to vegetative control. The Freight Services Contractor shall be responsible for any fines or penalties levied for failure to so comply.

The Freight Services Contractor shall submit a Vegetation Control Plan (VCP) to Capital Metro for review and approval sixty (60) days after the NTP Date [CDRL14-40]. The plan shall provide a schedule for vegetation control including grass mowing and a detail of activities to control vegetative growth and prevent vegetative intrusion. Vegetation control of the right-of-way consists of the control of all grass and brush and trees, etc. growing on or over Capital Metro's Service Property.

Vegetation control includes all follow-up mechanical or manual removal of brush and grass which is not controlled by chemical application or as may be required to comply with local fire codes, Capital Metro requirements, and FRA standards or as necessary to prevent growth which intrudes into walkways or track structures from adjacent property, impairs visibility, or impairs drainage channels. Mechanical or manual removal includes its removal from the Service Property.

The Freight Services Contractor shall maintain vegetation on the Service Property, exclusive of the Commuter Rail Territory, within twenty-five (25) feet of the center line of the nearest track by means of weed spray to kill vegetation and prevent vegetative encroachment. Spraying shall not take place on days with winds, or wind gust in excess of five (5) mph. Spraying shall be planned such that application will follow manufacturer's product instructions, including weather conditions. The Freight Services Contractor shall take all necessary steps to protect any environmentally sensitive areas.

The Freight Services Contractor shall keep all approaches to active grade crossings clear so that approaches to the crossing shall be visible from the train in accordance with 49 CFR 213.37 and Capital Metro standards. The Contractor shall ensure that the line of sight conditions at crossings is not obstructed by brush, weeds, or trees on the right-of-way in order to provide a clear view of approaching trains or motorists. In doing so, The Freight Services Contractor shall keep vegetation clear along the Service Property within 250 feet in each direction of track from where the centerline of the highway grade crossing and the centerline of the Capital Metro railroad right-of-way intersect. The Crossing Vegetation Control Area shall be clear from property line to property line so that the crossing approaches are visible to both the trains and highway traffic. If the Service Property includes fencing, the Freight Services Contractor shall control vegetation within two feet of the fence. When vegetation obstructing the view of the grade crossing warning systems from an approaching train or motorist is located on private property, the Freight Services Contractor shall notify Capital Metro immediately [CDRL 14-41].

The Freight Services Contractor shall maintain vegetation under bridges and within twenty five (25) feet of either side of a bridge, to a height of not more than thirty (30) inches. The Freight Services Contractor shall remove drift and trees under and around bridges and culverts within fifteen (15) days.

The Freight Services Contractor shall control vegetation in the right-of-way in a manner that may include pre-emergent chemical soils treatment and follow-up spot contact spray and

mowing to aid in controlling germination and emergent vegetation. Chemical treatment shall be used with full environmental impact awareness and in accordance with the manufacturer's instructions. The Contractor shall include chemical soil treatment to prevent germination and to kill emergent vegetation. Application of chemical shall be scheduled by the Contractor in order to achieve the results specified herein. Application of chemical agents shall be in conformance with all applicable laws and regulations. The Contractor is specifically liable for damage claims attributed to chemical application, and any such claims received by CMTA will be referred to the Contractor. The Contractor shall obtain all permits for chemical application.

The Freight Services Contractor shall trim all trees and underbrush to ensure that no vegetation or other growth or downed trees are within the railroad property line, within twenty-five (25) feet of the centerline of the nearest track or adjacent to highway at-grade crossings as defined herein. With the exception of areas adjacent to grade crossings and as required by the Authority or applicable regulations, no other tree removal work shall be performed without prior approval of the Authority.

Vegetation identified by Capital Metro as a nuisance or safety hazard shall be removed by the Freight Services Contractor with due diligence, and in any event, not later than fifteen (15) days after notification by the Authority. The Freight Services Contractor shall respond to "as needed" requests for vegetation control as directed by Capital Metro.

11.14.6.4 Replacement Materials

Any and all rails, ties, or other items of track and signaling equipment removed and replaced by the Freight Services Contractor in the performance of required maintenance shall become the property of the Freight Services Contractor, regardless of whether such removed property is sold or retained by the Operator as materials and supplies, provided the Operator purchased the material used in the replacement. If replacement material is provided or purchased by Capital Metro, then any and all materials removed shall become the property of Capital Metro, unless otherwise agreed by Capital Metro.

11.14.7 Contractor Owned or Leased Property

The Freight Services Contractor shall maintain and operate, at its own expense any buildings used or leased by the Freight Services Contractor in performance of the Freight Services Contract. Such buildings, including any buildings owned by Capital Metro and used by the Freight Services Contractor, shall be maintained and operated in good operating condition and repair in a manner consistent with sound, accepted engineering practices.

11.14.8 Maintenance Plan and Program

Within thirty (30) days of Capital Metro's acceptance of the Day One Conditions Assessment report, the Freight Services Contractor shall update the Maintenance Plan and Program included in the Freight Services Contractor's final proposal and submit this revision to Capital Metro, for review and approval, as the Freight Services Contractor's initial Annual Maintenance Program [CRDL 14-42]. This plan and annual program shall address all maintenance activities required under this contract include maintenance of equipment, maintenance of track and structures, maintenance of way and maintenance of the signal system.

The Maintenance Plan shall include, but not limited to, rail replacement, tie and OTM replacement, grade crossing surface improvement, tamping and surfacing program,

drainage, bridge maintenance, culvert maintenance and replacement, signal system maintenance [CDRL 14-32], vegetation control [CDRL 14-40], and debris and trash removal.

On or before each anniversary date of the Commencement Date, the Freight Services Contractor shall prepare and submit subsequent revisions to its Annual Maintenance Plan and Program to Capital Metro for approval [CDRL 14-16]. This annual program shall outline the anticipated maintenance activities to be performed during the upcoming year including maintenance of equipment, maintenance of track and structures, maintenance of way, and maintenance of signal systems. The program shall include the quantities of materials to be installed during the year in which the plan is submitted, a description of the work to be done including personnel and equipment, the location of proposed maintenance, and rationale and necessity of the work to be performed. Estimated prices for material, labor and equipment shall be included, as well as the projected rates of production. The program shall identify the inspection activities, frequency of task, specific work schedule, and proposed work windows, track outages and service diversions. This program shall be prepared in consultation and coordination with Capital Metro and Capital Metro's Commuter Rail Operator Contractor.

The Freight Services Contractor shall provide monthly summary reports, as defined in Section 11.8.1, indicating Program work completed and the current status of on-going and planned work [CDRL 14-10].

The Freight Services Contractor shall provide in the Annual Report, as defined in Section 11.8.2, a summarization of the Program work performed by location, type and quantity during the reporting year. Each Annual Report shall indicate how the work performed meets the Freight Services Contract requirements [CDRL 14-13].

11.14.9 Maintenance Deficiencies

The Freight Services Contractor may be declared deficient in its maintenance activities if a deviation from the maintenance requirements of the Freight Services Contract remains uncorrected for more than ninety (90) days after notification of the deviation is made by Capital Metro in writing to the Freight Services Contractor. Capital Metro reserves the right to assess and Contractor agrees to pay liquidated damages of Five Hundred Dollars (\$500) per day for any delay beyond ninety (90) days after such written notification. In addition to any liquidated damages assessed by Capital Metro, the Freight Services Contractor shall be solely responsible to the FRA for any and all fines and penalties associated with the condition and state of repair of the Service Property, exclusive of the Commuter Rail Territory, as required by the Freight Services Contract.

11.15 Condition of Service Property

11.15.1 Day One Conditions Assessment

Within thirty (30) days of NTP, the Freight Services Contractor shall, with the assistance of Capital Metro and/or its representatives, assess the "Day One" conditions for the purposes of benchmarking the minimum level of maintenance required to be provided by the Freight Services Contractor. The results of this assessment shall be incorporated by the Freight Services Contractor into a Day One Conditions Assessment report and submitted to Capital Metro at least ten (10) days after completion of Conditions Assessment activities but no more than forty-five (45) days after NTP. The report, once reviewed and accepted by Capital Metro, shall determine the FRA Track Class for each section of the Service Property to be

maintained by the Freight Services Contractor [CDRL 14-43]. This assessment shall also serve as the basis for future evaluation of effectiveness of the Freight Services Contractor's actions in maintaining condition of the track and right-of-way over the term of the Freight Services Contract and any extensions thereof. All costs associated with the Day One Conditions Assessment efforts, except for the costs of Capital Metro staff and/or its representatives, shall be the sole responsibility of the Freight Services Contractor.

The Freight Services Contractor agrees, at its sole cost and expense, to put, keep and maintain the Service Property, exclusive of the Commuter Rail Territory, in good order, repair and safe condition. The Freight Services Contractor agrees that the level of FRA Track Class determined during the Day One Conditions Assessment effort, including subsequent revisions, shall be maintained on the Service Property, exclusive of the Commuter Rail Territory, throughout the duration of the Freight Services Contract, and any extensions thereof.

The Freight Services Contractor shall return the Service Property, exclusive of the Commuter Rail Territory, back to the Authority upon termination or expiration of the Freight Services Contract in the same condition as such was documented in the Day One Conditions Assessment report, or as documented in subsequent revisions to the Day One Conditions Assessment report.

Day One Conditions Assessment activities are described below.

11.15.2 Tie and Timber Condition

The Freight Services Contractor and Capital Metro, and/or its representatives, shall mutually undertake an inventory of ties and their condition. The inventory may be taken on a sample or 100% basis as agreed. The inventory shall be sufficiently complete and accurate to define the number of ties within track designated by track name and/or track segment, and denote the number of ties considered "good", "fair" and "failed" in each, as mutually agreed.

Turnout timbers and bridge deck timbers shall be inspected as part of this program. Data shall be separately taken and recorded for each turnout and bridge.

11.15.3 Track Geometry

A track geometry car operated by a qualified rail inspection services provider shall traverse all track classified as FRA Class 2 and Class 3. FRA Class 1 and Excepted track shall not be part of the track geometry car effort. The track geometry car shall record geometry conditions (track gauge, alignment and surface). The cost of the track geometry car, its operation, and preparation of the conditions report, shall be the responsibility of the Freight Services Contractor.

The Freight Services Contractor shall provide a report with appropriate metrics providing an overall measure of track quality. Such metrics may involve standard deviation of gauge, alignment, and surface measurements, counts of exceedances beyond a mutually agreed nominal standard, or similar means to quantify track geometry quality, as mutually agreed. The report shall indicate any areas where track geometry defects exist which cause the subject track segment's FRA Track Class to fall below the minimum standards for the FRA Track Class defined in Table 1. The Freight Services Contractor shall have up to twenty-four (24) months to resolve all reported defects to bring all measured track up to the FRA Track Class defined in Table 1.

The Freight Services Contractor may request a change in FRA Track Class for any segment of track within the Service Property, exclusive of the Commuter Rail Territory, per the requirements of Section 11.15.8.

A copy of the track geometry report shall be provided to Capital Metro as part of the Day One Conditions Assessment report [CRDL 14-43].

11.15.4 Bridge Condition

The Freight Services Contractor and Capital Metro, and/or its representatives, shall undertake a joint inspection of all bridges in the Service Property, exclusive of the Commuter Rail Territory, to determine the Day One Condition of the bridges. The designated Railroad Bridge Inspector shall be a certified Bridge Engineer in the State of Texas. Selection of the inspection shall be mutual. If mutual agreement cannot be reached, the decision of Capital Metro shall be final.

The inspection shall be conducted in accordance with latest edition of the AREMA Bridge Inspection Handbook using the Annual Inspection Procedures outlined in Capital Metro's Bridge Management Plan (Appendix L). The inspection shall rate the condition of the bridges as Critical, Poor/Marginal, Fair, Good, and New or Almost New as defined in Capital Metro's Bridge Management Plan. The costs for such inspection, except for the costs of Capital Metro staff and/or its representatives, shall be the sole responsibility of the Freight Services Contractor.

The condition of the bridges will be documented in the Day One Conditions Assessment report [CRDL 14-43].

11.15.5 Crossing Condition

The Freight Services Contractor and Capital Metro, and/or its representatives shall assess the condition of all public and private crossings, including approaches, within the Service Property, exclusive of the Commuter Rail Territory. This assessment shall document the type of crossing protection, age and functionality of equipment, type of signage, and material and condition of the approach. The condition of the crossings and the Freight Services Contractor's maintenance limits for each crossing, including approaches and Crossing Vegetation Control Areas, shall be noted in the Day One Conditions Assessment report [CRDL 14-43] and used as the baseline for the crossing inventory database to be maintained by the Freight Services Contractor in accordance with 49 CFR Part 234..

11.15.6 Digital Video

The Freight Services Contractor shall make digital video recordings of all track and structures within the Service Property, exclusive of the Commuter Rail Territory. These videos shall document the overall condition and shall serve as a point of reference should questions arise in the future regarding the condition of the property and the Freight Services Contractor's performance of its maintenance duties.

The videos shall be taken at ground level from a highway-rail car or locomotive. The videos shall be time- and date-stamped and include milepost or latitude/longitude references so that video images can be readily correlated with physical locations. The videos shall be taken in both directions (i.e., a full round trip video of each line segment is required).

The Freight Services Contractor shall provide copies of all videos to Capital Metro in digital format and submitted with the Day One Conditions Assessment report [CRDL 14-43].

11.15.7 Annual and Final Condition Assessments

The Freight Services Contractor and Capital Metro shall jointly conduct an Annual Condition Assessment of the Service Property, exclusive of the Commuter Rail Territory. This assessment shall consist of visual inspection of all railroad assets, either on foot or from a hi-rail car. Findings of the Annual Condition Assessment, as detailed in a Contractor provided report, shall be compared with the results of the Day One Conditions Assessment report, including any subsequent revisions, to confirm that track and right-of-way are being maintained to at least their original condition or upgraded condition noted at the time of a revision of the Day One Conditions Assessment report. The Annual Condition Assessment shall also be used to evaluate the effectiveness of the Freight Services Contractor's Annual Maintenance Program [CDRL 14-44] and update the crossing inventory database as required by 49 CFR Part 234.

Capital Metro reserves the right to perform additional assessments of track and right-of-way conditions at its own expense at any time during the term of the Freight Services Contract, or any extensions thereof.

Prior to termination or expiration of the Freight Services Contract, or any extension thereof, the Freight Services Contractor and Capital Metro shall jointly perform a Final Condition Assessment employing the same activities used during the Day One Conditions Assessment. The findings of the Final Condition Assessment, as detailed in a Contractor provided report, shall be compared with the results of the Day One Conditions Assessment report, including subsequent revisions, to confirm that track and right-of-way are being returned to Capital Metro in at least their original condition as defined during the Day One Conditions Assessment, or the upgraded condition defined in subsequent revisions [CRDL 14-45].

All costs associated with the Annual and Final Conditions Assessment efforts, except for the costs of Capital Metro staff and/or its representatives, shall be the sole responsibility of the Freight Services Contractor.

11.15.8 Change in Class

If the FRA Track Class of any track is improved at the expense of either Capital Metro or the Freight Services Contractor, such track shall be maintained by the Freight Services Contractor at the improved FRA Track Class, and the baseline Day One Conditions Assessment report shall be revised by the Freight Services Contractor into a revised Day One Conditions Assessment report [CDRL 14-43] using the Condition Assessment activities defined in Section 11.15.1.

If such improvements unduly impact the Freight Services Contractor's maintenance program, the Freight Services Contractor shall provide written notice to Capital Metro in accordance with the change procedures in Exhibit E quantifying such impacts and requesting adjustment(s) to one or more of the Fees identified in Section 10. If Capital Metro does not accept such requested Fee adjustments, the Freight Services Contractor's request shall be reviewed by a TPA (Third Party Administrator). The decision by the TPA shall be final and undisputable.

The Freight Services Contractor may request in writing to Capital Metro for the consideration to downgrade the FRA Track Class of any segment of track at any time during the term of this Contract, or extensions thereof. While Capital Metro may grant such request, at its sole discretion, Capital Metro may require the Freight Services Contractor to return the subject track segment to that documented in the Day One Condition Assessment report, or revisions thereof, upon termination or expiration of the Freight Services Contract, or extensions thereof.

11.16 Repairs and Restoration

The Freight Services Contractor shall be responsible for the repair and restoration of all railroad assets anywhere along the Service Property that is damaged or destroyed by derailments or other accidents caused by its operations or use.

In the event of damage arising from a flood, landslide, geological disturbance or other natural disaster, the Freight Services Contractor shall be responsible for the payment of the first Fifty Thousand Dollars (\$50,000) of costs required to restore the railroad to service, and thereafter up to fifty (50) percent of any additional costs of repairing such damage resulting from such disaster, up to a maximum of One Hundred Thousand Dollars (\$100,000) per occurrence, except where the costs of such repairs are fully reimbursed by any local, state or federal government agency.

The Freight Services Contractor shall not be responsible for repair and restoration of deficiencies occurring on out-of-service track, unless the Freight Services Contractor and Capital Metro mutually enter into a separate agreement specifying the corrective work to be performed and the additional compensation to be paid to the Freight Services Contractor.

11.17 Improved Property and Capital Investments

The Freight Services Contractor shall have the right, but not the obligation except where required otherwise, with the prior written approval of Capital Metro, to make, at its own expense, capital improvements for freight railroad purposes, on the Service Property, exclusive of the Commuter Rail Territory, during the term of this Contract and any extensions thereof. The Freight Services Contractor, at its own expense, may construct spur tracks, lead tracks, additional track and turnouts on the Service Property, exclusive of the Commuter Rail Territory, deemed necessary or appropriate to serve existing or future rail freight customers.

Capital Metro shall have the right to review and approve any plans for construction of any such improvement or investment described herein prior to commencement of construction. The Freight Services Contractor shall not construct any additional facilities without first receiving written permission from Capital Metro. Such permission shall not be unreasonably withheld or delayed. If permission is withheld, Capital Metro will provide the Freight Services Contractor operational, engineering or other written justification for such denial.

In such voluntary improvements, the Freight Services Contractor shall be required to pay the cost of removal of appurtenant structures, excluding track improvements, where required by the Authority. Where such Contractor-financed improvements require or involve the replacement of an asset currently in place, the Freight Services Contractor and the Authority shall agree in writing in advance of installation, whether the Freight Services Contractor or the Authority shall have ownership of the assets to be removed from the Service Property. In the absence of a written agreement, the ownership shall be vested with the Authority.

11.18 Other Freight Railroad Coordination

The Freight Services Contractor shall coordinate in all reasonable respects with other freight railroads intersecting and/or interchanging with the Service Property. The Freight Services Contractor shall coordinate in a manner that ensures uninterrupted and efficient flow of freight shipments from other freight railroads onto the Service Property.

11.19 Commuter Rail Coordination

The Freight Services Contractor shall coordinate as required with Capital Metro's Commuter Rail Operator Contractor, who provides all dispatching services, operates Commuter Rail Passenger service on behalf of Capital Metro along the Commuter Rail Corridor, and maintains all Capital Metro owned infrastructure within the Commuter Rail Territory.

The Freight Services Contractor shall work with the Commuter Rail Operator Contractor in accordance with the Temporal Separation Plan to request the use of any mid-day service windows. Capital Metro, and its Commuter Rail Operator Contractor, shall not unreasonably withhold approval of freight service during the mid-day window.

11.20 EIC Support and Coordination

The Freight Services Contractor shall provide reasonable support, coordination and EIC protection to Capital Metro for Authority initiated activities, and for any third party activities approved by Capital Metro that will take place on or near the Service Property, exclusive of the Commuter Rail Territory. The Freight Services Contractor shall provide coordination support and EIC protection services, at no extra cost to Capital Metro, not to exceed 2,080 hours on a fiscal year basis (October through September), in support of the projects defined below. Hours not used in one year shall "roll over" to the following year. If Capital Metro and/or the third parties approved by Capital Metro exceed the allotted hours in a fiscal year for the activities defined in this section, including use of any roll over hours, the Freight Services Contractor can seek reimbursement from Capital Metro or directly from the third party, for the EIC services provided. The rate charges shall not exceed the employee's hourly rate based on payroll records plus a one-hundred (100) percent mark-up for overhead and profit or other rates as reasonably negotiated with Capital Metro.

11.20.1 Capital Metro Initiated Freight Improvements Within the Service Property

The Contactor shall provide coordination and EIC protection as necessary for all projects referenced in Section 3. If Capital Metro arranges for additional Capital Metro funded capital improvement to the Service Property, above and beyond those referenced in Section 3, that directly benefit the provision of freight services within the Service Property, the Freight Services Contractor shall provide coordination and EIC protection as necessary.

11.20.2 Track Chart Updates

The Freight Services Contractor shall support Capital Metro with coordination support and EIC protection within the Service Property as necessary to develop Capital Metro initiated updates to the track charts in accordance with Section 11.8.5.

11.20.3 High and Wide Detector Installation and Testing

As referenced in Section 11.12, the Freight Services Contractor shall provide coordination support and EIC protection during the installation and testing of any additional high and wide detector within the Service Property.

11.20.4 Wheel Impact Load Detector Installation and Testing

As referenced in Section 11.13, the Freight Services Contractor shall provide coordination support and EIC protection during the installation and testing of any WILD within the Service Property.

11.20.5 Capital Metro Initiated Crossing Improvements, Non-Freight Related Improvements and Third Party Capital Metro Approved Activities

The Freight Services Contractor shall provide coordination support and EIC protection service, in support of Capital Metro initiated crossing improvements, Capital Metro initiated infrastructure improvements not related to freight service, and all Capital Metro approved third party activities.

11.21 Contract Document Requirements List for Section 11

Reference	Section	Description	Submission
14-01	Ex E, Sect. 7	Proof of Insurance	10 days after NOA
14-02	11.4.3	Change in Management Notice	As Needed
14-03	11.4.3	Management Corrective Action Response	As Needed
14-04	11.4.4, 11.8.3.2	Organizational Profile and Chart	60 days after NTP, Annually
14-05	11.6.1	Business and Marketing Collateral Materials	As Needed
14-06	11.6.2	Business Development and Marketing Plan Initial Update	60 days after NTP
14-07	11.6.3, 11.8.2	Quarterly Marketing and Business Development Report	Quarterly
14-08	14.7.4, 11.8.3.2	Business Development and Marketing Plan Annual Update and Annual Report	Annually
14-09	11.8.1	Monthly Financial Report	Monthly
14-10	11.8.1	Monthly Operating Report	Monthly
14-11	11.8.1	Monthly Claims Report	Monthly, as needed
14-12	11.8.1	Monthly FRA Reportables and Corrective Actions	Monthly, as needed
14-13	11.8.3.1	Annual Report	Annually
14-14	11.8.3.2, 11.14.5	Annual Bridge Inspection Report	Annually
14-15	11.8.3.2, 11.14.4	Annual Track Investments	Annually
14-16	11.8.3.2, 11.14.8	Annual Maintenance Program	Annually
14-17	11.8.3.2, 11.9.6	Annual Proposed Timetable	Annually
14-18	14.9.3.2, 11.9.5	Safety and Security Plan and Program	60 days after NTP, Annually
14-19	11.8.4	Incident Report	As Needed
14-20	11.8.4	Claim Notice	As Needed
14-21	Ex. E Sect. 20, 11.8.4	Inspection Notice	As Needed
14-22	11.9.3	Additional Axle Request	As Needed
14-23	11.9.5	Safety and Security Correction Action Plan	As Needed
14-24	11.9.6	Timetable Changes (during year)	As Needed
14-25	11.9.7	Training and Examination Program	60 days after NTP, As Needed
14-26	11.10	PTC Compliance Plan	90 days after Commencement Date
14-27	11.10	PTC Acceptance Test Reports	As Needed
14-28	11.11	Periodic Scale Calibration	6 months after Commencement Date, Annually
14-29	11.12	Overload Operating Procedures	60 days after Commencement Date
14-30	11.12	Overload Corrective Measures	As Needed

Reference	Section	Description	Submission
14-31	11.14.3.1, 11.14.3.4	Modification of Grade Crossing Warning System	As Needed
14-32	11.14.3.2	Signal System Maintenance Plan	90 days after NTP
14-33	11.14.3.2	Signal System Maintenance Procedures	90 days after NTP
14-34	11.14.3.2	Signal System Inspection and Test Plan	90 days after NTP
14-35	11.14.3.2	Signal Systems Inspection and Test Procedures	90 days after NTP
14-36	11.14.3.2	Signal System Inspection and Test Data Sheets	90 days after NTP
14-37	11.14.3.2	Failure Reduction Plan	90 days after NTP
14-38	11.14.3.3	Post Accident Crossing Inspection & Test Report	As Needed
14-39	11.14.3.4	Signal System Plan Discrepancy	As Needed
14-40	11.14.6.3	Vegetation Control Plan	60 days after NTP
14-41	11.14.6.3	Off-Premise Vegetation Obstruction Notice	
14-42	11.14.8	Initial Annual Maintenance Program	30 days after acceptance of Day One Conditions Assessment report
14-43	11.15.1	Day One Conditions Assessment Report	10 days after completion of Condition Assessment Activities, including revisions
14-44	11.15.7	Annual Condition Assessment Report	Annually
14-45	11.15.7	Final Condition Assessment	Prior to Termination
14-46	Ex. E, Sect. 20	Inspection Report	As Needed

12 Capital Metro Responsibilities

12.1 Excursion Rail

Capital Metro shall not allow ASTA operations to unreasonably interfere with the Freight Services Contractor's provision of services under the Freight Services Contract.

12.2 Maintenance of McNeil Junction and Robinson and Abbott Yards

The Authority's Commuter Rail Operator Contractor shall be responsible for inspection and maintenance of all yard tracks, mainline tracks, communications and signaling equipment, and grade crossing warning devices and approach circuits within Robinson and Abbott Yards, as well as at McNeil Junction for which Capital Metro is responsible for maintenance (refer to Union Pacific agreement provided in Appendix P).

The Freight Services Contractor shall coordinate, as necessary, with the Authority and its Commuter Rail Operator Contractor to support efficient inspection and maintenance within Robinson and Abbott Yards, as well as at McNeil Junction. The Commuter Rail Operator Contractor, not the Freight Services Contractor, shall provide Employee in Charge (EIC) protection as necessary to support any track, communications or signal maintenance-related work activities being conducted within Robinson and Abbott Yards and at McNeil Junction. The Commuter Rail Operator Contractor shall notify the Freight Services Contractor of any such activities.

12.3 Security

Capital Metro shall be responsible for the coordination between the Freight Services Contractor, the Capital Metro Security Department and local law enforcement to support the safety and security efforts of the Freight Services Contractor.